

103

INVESTIGATIVE PROCEDURES OF THE U.S. POSTAL SERVICE

Y 4. P 84/10:103-43

Investigative Procedures of the U.S...

HEARING BEFORE THE COMMITTEE ON POST OFFICE AND CIVIL SERVICE HOUSE OF REPRESENTATIVES ONE HUNDRED THIRD CONGRESS SECOND SESSION

MAY 12, 1994

Serial No. 103-43

Printed for the use of the Committee on Post Office and Civil Service

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(III)

INVESTIGATIVE PROCEDURES OF THE U.S. POSTAL SERVICE

THURSDAY, MAY 12, 1994

HOUSE OF REPRESENTATIVES,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
Washington, DC.

The committee met, pursuant to call, at 9:35 a.m., in room 311, Cannon House Office Building, Hon. William Clay (chairman of the committee) presiding.

Members present: Representatives Clay, McCloskey, Sawyer, Norton, Collins, Bishop, Hastings, and Morella.

Mr. CLAY. The committee will come to order.

This is the last of a series of three hearings on the blatant abuses of power by the Postal Inspection Service against the employees of the U.S. Postal Service. As the committee learned at its hearings in Cleveland, OH and West Palm Beach, FL, Inspection Service narcotic enforcement operations wreaked irreparable harm on innocent postal employees. They lost their jobs. Their reputations were smeared. Their credit ratings were ruined. They have been emotionally harmed. They and their families have suffered greatly. One victim was attempting suicide only to be stopped by his daughter. Imagine the emotional harm to that child who was forced to convince her father to put down the gun and not kill himself.

These occurred because the Inspection Service believed its own hired convicted felons that it placed on the workroom floors of postal facilities rather than the postal employees themselves. These dope dealing felons were not properly supervised. The inspectors supervising them were not properly trained. Postal inspectors were more interested in arrest statistics than the well-being of postal employees.

Today we will hear from victims from two more cities, Los Angeles and Minneapolis. Just like Cleveland and West Palm Beach, confidential informants hired by the Inspection Service were given carte blanche control over a narcotic enforcement operation. Proper police procedures were thrown out the window and innocent postal workers suffered as a result. The informants were paid more and more money. The Inspection Service continued business as usual. Only the innocent workers lost their jobs.

The committee is not aware of any program by any other Federal law enforcement entities that infiltrates the agency's workplace using felons as paid informants as the Inspection Service has been doing for over 10 years. The list of charges against some of these paid informants is frightening. These informants are handling our

mail—credit cards, grandma's birthday cards and gifts to her grandchildren, Christmas presents, bills, and payments.

Following the testimony of these victims, we will hear from Chief Postal Inspector Hunter. He can explain why the Inspection Service ruined the lives of innocent postal employees; why the Inspection Service allows convicted felons to infiltrate postal facilities; and what the Inspection Service is doing to right the wrongs it wreaked on these postal workers.

At a time when the Postal Service is facing an uncertain future, when it has a potential \$2.3 billion loss this year, when mail service is poor and becoming worse, when its productivity is falling, when mail fraud is increasing, when there are numerous reports of mail theft, when postal drivers and letter carriers are attacked in the streets, many times at the beginning of the month when checks are delivered, and when the Postmaster General reports that postage meter fraud may exceed \$100 million per year, the Inspection Service is busy hiring informants with criminal records. The future of the Postal Service depends on delivering the mail on time and efficiently.

The Chief Inspector's statement leaves the impression that there is a pervasive drug problem in the Postal Service but statistics, however, do not support that contention. For the past five and one-quarter years, the Inspection Service has 1,731 cases concerning narcotics trafficking by postal employees. Compared to the over 700,000 postal employees, that is less than three-tenths of 1 percent of all these workers. In addition, there was employee turnover during the last 5 years which makes the narcotic problem even smaller. According to their own statistics, there is no pervasive drug problem in the Postal Service. The focus and tactics of the Inspection Service must be reordered and realigned.

Mr. Hunter states that racial bias will not be tolerated. The actions of the Inspection Service speak louder than his words. Postal Service data indicate that black male postal employees were the targets of almost one-half of the Inspection Service's narcotic cases over the last 5 years when black males comprised only 13 percent of the work force.

The figures are far worse in the Chicago division of the Inspection Service. There, black males are only 6 percent of postal employees but, were the targets of 78 percent of all the narcotic cases. In St. Louis, black males comprise 18 percent of the work force but were targets in 70 percent of the cases. In New Orleans, there were no Inspection Service narcotic cases against any white, either male or female, even though white comprise 81 percent of the employees.

These numbers are a disgrace. Not only does the Inspection Service set felons loose on the workroom floor, but those felons target black males. In the eyes of the Inspection Service, the Postal Service's drug problem is a black male employee problem. It is time for the Inspection Service to get off the backs of postal employees, especially black male employees.

Due to the number of witnesses, the committee asks each witness to limit his or her oral testimony to 10 minutes. The written testimony of each witness will be included in the record.

Finally, in her testimony, Ms. de la Forest expresses fear that the Postal Service may take retaliatory action against her for testi-

fying here today. This committee will immediately take action against anyone who takes any retaliatory action against any witness coming before this committee.

Are there any other opening statements?

Mr. Sawyer.

[The prepared statement of Hon. William L. Clay follows:]

PREPARED STATEMENT OF HON. WILLIAM L. CLAY, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF MISSOURI

This is the last of a series of three hearings on the blatant abuses of power by the Postal Inspection Service against the employees of the United States Postal Service. As the Committee learned at its hearings in Cleveland, Ohio, and West Palm Beach, Florida, Inspection Service narcotic enforcement operations wreaked irreparable harm on innocent postal employees. They lost their jobs. Their reputations were smeared. Their credit ratings were ruined. They have been emotionally harmed. They and their families have suffered greatly. One victim was attempting suicide only to be stopped by his daughter. Imagine the emotional harm to that child who was forced to convince her father to put down the gun and not kill himself.

These occurred because the Inspection Service believed its own hired convicted felons that it place on the workroom floors of postal facilities rather than postal employees. These dope dealing felons were not properly supervised. The Inspectors supervising them were not properly trained. Postal Inspectors were more interested in arrest statistics than the well being of postal workers.

Today we will hear from victims from two more cities, Los Angeles and Minneapolis. Just like Cleveland and West Palm Beach, confidential informants hired by the Inspection Service were given carte blanche control over a narcotic enforcement operation. Proper police procedures were thrown out the window, and innocent postal workers suffered. The informants were paid more and more money. The Inspection Service continued business as usual. Only the innocent workers lost their jobs.

The Committee is not aware of any program by any other federal law enforcement entity that infiltrates the agency's workplace using felons as paid informants as the Inspection Service has been doing for over ten years. The list of charges against some of these paid informants is frightening. These informants are handling our mail credit cards, Grandma's birthday cares and gifts to her grandchildren, Christmas presents, bills and payments.

Following the testimony of these victims, we will hear from Chief Postal Inspector Hunter. He can explain why the Inspection Service ruined the lives of innocent postal employees; why the Inspection Service allow convicted felons to infiltrate postal facilities; and what the Inspection Service is doing to right the wrongs it wreaked on these postal workers.

At a time when the Postal Service is facing an uncertain future, when it is facing a potential \$2.3 billion loss this year, when mail service is poor and becoming worse, when its productivity is falling, when mail fraud is increasing, when there are numerous reports of mail theft, when postal drivers and letter carriers are attacked in the streets, many times at the beginning of the month when checks are delivered, and when the Postmaster General reports that postal meter fraud may exceed \$100 million per year, the Inspection Service is busy hiring informants with criminal records. The future of the Postal Service depends on delivering the mail on time and efficiently.

The Chief Inspector's statement leaves the impression that there is a pervasive drug problem in the Postal Service. Inspection Service statistics, however, do not support that. For the past five and one-quarter years the Inspection Service has 1731 cases concerning narcotics trafficking by postal employees. Compared to the over 700,000 postal employees, that is less than 0.3 percent of all postal employees. In addition, there was employee turn over during the last five years which makes the "narcotic problem" even smaller. According to their own statistics there is no pervasive drug problem. The focus and tactics of the Inspection Service must be reordered and realigned.

Mr. Hunter states that racial bias will not be tolerated. The actions of the inspection Service speak louder than his words. Postal Service data indicate that black male postal employees were the targets of almost one-half of the inspection Service's narcotic cases over the last five years when black males comprised only 13 percent of the postal workforce. The figures are far worse in the Chicago Division of the Inspection Service. There black males are only 6 percent of postal employees but were the target of 78 percent of all the narcotics cases. In St. Louis black males comprise

18 percent of the workforce but were targets in 70 percent of the cases. In New Orleans there were no Inspection Service narcotic cases against any white, either male or female, even though whites comprised 81 percent of employees. These numbers are a disgrace. Not only does the Inspection Service set felons loose on the workroom floor, but those felons target black males. In the eyes of the Inspection Service, the Postal Service's drug problem is a black male employee problem. It's time for the Inspection Service to get off the backs of postal employees, especially black male employees.

Due to the number of witnesses, the Committee asks each witness to limit his or her oral testimony to ten minutes. The written testimony of each witness will be included in the record.

Finally, in her testimony, Ms. de la Forest expresses fear that the Postal Service may take retaliatory action against her for testifying here today. This Committee will immediately take action against anyone who takes any retaliatory action against you Ms. de la Forest.

Mr. SAWYER. Thank you, Mr. Chairman. I just want to take a moment to thank you for your continuing leadership in this area. It is a matter of concern to all of us who serve on this committee and to countless others in this Congress and beyond who share your concern.

As you know, I participated in the committee hearing last year in Cleveland. We heard how the actions of the Inspection Service had disrupted the lives of a number of innocent postal employees. The real tragedy is that we can't erase what has already taken place.

The Inspection Service's handling of that case was inexcusable. The tragedy will be, though, if we don't learn from it. We can learn that those mistakes, the safety and well-being of postal employees has to be a top priority. It is a simple fact that a secure workplace should not be a fringe benefit. The truth is that postal employees deserve a workplace that is safe and productive and offers dignity and respect at all times.

Clearly a drug free work place is something that we all devoutly seek to achieve. However, I am concerned about the role that the Inspection Service has undertaken in eliminating substance abuse in the workplace. These hearings provide us an opportunity to address questions about the most appropriate use of those Inspection Service resources and the establishment of meaningful priorities.

I am committed to continue to work with the chairman and with the Inspection Service and with the chief to develop an appropriate framework and responsible protocols to ensure the safety and productivity of the postal workers in the postal workplace.

Thank you, Mr. Chairman.

Mr. CLAY. Thank you.

[The prepared statement of Hon. Thomas C. Sawyer follows:]

PREPARED STATEMENT OF HON. THOMAS C. SAWYER, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF OHIO

Thank you, Mr. Chairman, for your continued leadership on this most important issue.

As you know, I participated in the committee's hearing lat year in Cleveland. At that time, we heard how the actions of the Postal Inspection Service disrupted the lives of several innocent postal employees. The Inspection Service's handling of that case was inexcusable. Unfortunately, we cannot erase what has already taken place.

But we can learn from those mistakes, in an effort to ensure an appropriate function for the Inspection Service. The safety and well-being of postal employees must be a top priority. A secure work environment is not a fringe benefit. Postal employees deserve a workplace that is safe and productive, and offers dignity and respect at all times.

Clearly, a drug-free workplace is an admirable and necessary goal in terms of safety. However, I am concerned about the role of the Inspection Service in eliminating substance abuse in the workplace. These hearings provide us with an opportunity to address questions about the most appropriate use of Inspection Service resources and establishment of meaningful priorities.

I remain committed to working with Chief Inspector Hunter as we seek to develop an appropriate infrastructure to ensure the safety and productivity of postal workers.

Thank you, Mr. Chairman.

Mr. CLAY. Mrs. Morella.

Mrs. MORELLA. Thank you, Mr. Chairman.

I just want to make a few comments regarding the testimony that I have had an opportunity to peruse. I am troubled that some postal employees have been falsely accused, harassed, lost their jobs, lost their homes, their good names, because of overzealous postal inspectors and unscrupulous hired informants.

Indeed this is a travesty of justice. There is legitimacy to try the control the workplace against the use and abuse of alcohol and drugs; most employees agree to that. However, when innocent employees are rounded up and handcuffed, it is easy to see why there is a problem with morale and productivity.

This type of abhorrent behavior is reminiscent of the gulag. I think we all learned that sorry doesn't make a person come alive again, and I do note that chief postal inspector, Mr. Hunter, does apologize for the behavior of the Postal Inspection Service and the bizarre methods used to entrap postal employees. However, this is not going to make whole the lives of individuals who strove to make a career in the postal system and were falsely accused of selling drugs. The zealous behavior of the inspection system doesn't justify the irreparable harm that was done to innocent individuals.

Like you, Mr. Chairman, I am also troubled by the racial overtones against minorities in these postal drug stings. I have said many times during our hearings in our committee that the Federal Government must set the standards for equality and fair play. Though I am saddened at the outcome of some of the investigations, it is of some consolation to note that the Postal Service is looking at its procedures and that it is getting help from GAO and other law enforcement entities, yet much more must be done to guarantee that this debacle doesn't happen again.

I am reminded in terms of the abuse of power of a line from Shakespeare. Though it is wondrous to have the strength of a giant, it is tyrannous to use it as a giant. I think that is the abuse of power that we have seen here that we are here to help remedy.

Thank you.

[The prepared statement of Hon. Constance A. Morella follows:]

PREPARED STATEMENT OF HON. CONSTANCE A. MORELLA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. Chairman, I would simply like to make a few comments regarding the testimony which I have had the opportunity to scan. I am deeply troubled that some postal employees have been falsely accused, harassed, lost their jobs and lost their homes, and their good name because of over-zealous postal inspectors and unscrupulous hired informants.

This is a travesty of justice. Indeed, there is legitimacy to try to control the workplace against the use and abuse of alcohol and drugs—most employees will agree to that. However, when innocent employees are rounded up and hand-cuffed, it is easy to see why there is a problem with moral and productivity. This type of abhorrent behavior is reminiscent of the Gulag.

I am sure that many of us were taught as children that "Sorry doesn't make a dead man (or woman) alive." I noted that Chief Postal Inspector, Mr. Hunter does apologize for the behavior of the Postal Inspection Service and the bizarre methods used to entrap postal employees. However, this will not make whole the lives of individuals who strove to make a career in the postal system and were falsely accused of selling drugs. The zealous behavior of the inspection system does not justify the irreparable harm done to innocent individuals.

Like you, Mr. Chairman, I am also troubled at the racial overtones against minorities in these postal drug stings. I have said many times during our hearings in our committee—the federal government must set the standard for equality and fair play. Though I am saddened at the outcome of some of the investigations, it is of some consolation to note that the postal service is looking at its procedures and that it is getting help from the Government Accounting Office and other law enforcement entities. Yet, much more must be done to guarantee that this debacle does not ever happen again.

Thank you, Mr. Chairman.

Mr. CLAY. The first witness is Frank A. McDonald, a former postal employee. Your entire statement will be put in the record at this point and you may proceed as you like.

STATEMENT OF FRANK A. McDONALD, FORMER POSTAL SERVICE EMPLOYEE

Mr. McDONALD. My name is Frank A. McDonald. I am a veteran of the U.S. Marine Corps, and until June 26, 1986, I was employed by the U.S. Postal Service for 9 years.

The date June 26, 1986 will always haunt me as it was one of the worst days of my life, only to find out later that it would only be one of many to come. On this date as I was just about to clock into my job at the Post Office, I was approached by two postal inspectors. They asked my name. I informed them and they in turn informed me that I was under arrest for violation of Health and Safety Code 11352-11355.

My first instinct was they thought I had some kind of disease, as they used the words "health" and "safety." I even thought this was a joke, but by the looks on their faces, I knew it wasn't. I was immediately handcuffed and taken to my locker so it could be searched. The inspectors did not find what they were looking for, so I was taken to an office, where I was interrogated for hours. It was only then that I found out it was really drug charges I was arrested on.

I told them they were crazy and they had the wrong person. The inspectors claimed to have caught me red-handed, so that I had better confess to this crime. I kept telling them they had the wrong person, and they could not have caught me red-handed with anything, as I was innocent. They threatened me with everything they could think of, but nothing they could say would ever make me admit to something I didn't do or even knew anything about.

After hours of going back and forth, they finally got tired of me telling them they had the wrong person and that I was innocent. So the inspectors advised me that I was now going to the county jail. My only hold on sanity at this point was that I was sure they were going to find out they really had the wrong person, and this mess would all be over with. Unfortunately, this never happened, and my nightmare had only just begun.

As postal inspectors escorted me out of the Post Office, they very cleverly used the front doors, where it was no surprise to them that we were met by mass media. I can remember looking at the faces

of the inspectors; in fact, I can still see the glow of pride they radiated. They were so sure they had caught the big, bad criminal. The inspectors thinking they were so smart were nothing more than ignorant as they were carting off an innocent man to jail and leaving the real criminal behind to watch the show. The inspectors enjoyed every bit of their 15 minutes of fame.

I was booked into the county jail and spent three days in jail before my family and friends could raise my bail money. Needless to say, those three days were horrifying, as I have never been incarcerated before. In fact, I have never even had a traffic ticket. I have always distanced myself from trouble, and before this disgrace, I had the clean record to prove it.

After my release from jail, I spent months locked up in my apartment, as I was afraid someone would recognize me from all the television coverage. I was afraid to show my face, even though I was innocent.

Apparently, this whole mess started when a man by the name of Gilbert Salinas contacted postal inspectors, stating that he knew drugs were being sold on postal grounds. Mr. Salinas volunteered to go undercover to try and identify the drug dealers. Of course, this was a paying job for this unemployed so-called construction worker.

Postal inspectors planted Salinas in our department at the terminal annex. It amazes me that postal inspectors felt this was a qualified informant. I would think some type of experience or training should be required.

I acquainted myself with Salinas the same way I acquainted myself to any other employee I worked with. We were never good friends—just the usual friendship you acquire when working with someone eight hours a day. I remember him having a good sense of humor, as he was always trying to make us laugh.

Mr. Salinas almost every day volunteered to go out and pick up everyone's lunch, so if this makes me guilty, so is everyone else in my department. I never found it odd that he always wanted to be the one to go out and pick up lunch, as I noticed on several occasions Salinas leaving the building and he looked for any excuse to get away. I didn't concern myself with this, as it was none of my business, but I did figure he would get caught sooner or later. Other than everyday chitchat, we spoke of nothing else, especially drugs.

After this so-called sting was over, Salinas named me along with 10 other employees. Salinas accused me of selling him approximately \$5,000 worth of cocaine. This is a blatant lie, as I have never sold him or anyone else any drugs. I didn't sell drugs then, I don't sell them now, and I never will.

To this day, I wonder why Salinas chose me to destroy. How did he make his decision to frame me? I know I will never know the answer, but what I do know for sure is, he would do or say anything to protect himself, as he was a criminal that should have been arrested, and not me.

I was taken to trial in Superior Court. As Federal prosecutors were the only ones with any smarts—they refused to press charges against me due to lack of evidence. Salinas testified under oath that I in fact did sell him cocaine. Yet Salinas got away with lying

under oath, as I have never sold him or anyone else anything. I'm sorry, but I was never able to get a copy of the trial transcript due to lack of funds.

The most disgusting part of this whole disgrace is there was never one single shred of evidence against me. You would think there would have to be some kind of proof, anything that would link me to this crime. The fact of the matter is, there was never anything. There was no kind of surveillance of any kind, no cameras, no pictures, no wires, no tapes, nothing at all; just the good work of a lying, unemployed criminal with the record to prove it. I will never understand why inspectors felt this man could possibly be so honest; why in the world did they think this man was so close to God? The only evidence against me was the word of Salinas, and nothing else.

The drugs that Salinas turned over to Inspector Chavez never came from me, as he claims. I am sure they came from Salinas himself, as the first batch was tested and proven to have 3.1 percent cocaine. The second batch had no cocaine. I honestly feel Salinas made these batches himself and kept the \$5,000 Inspector Chavez gave him so freely.

Through my whole trial, the testimony between Inspector Chavez and informant Salinas almost never corroborated. The words, "I'm not sure" and "I don't remember" were often used by these two professionals, who claim to be smart enough to conduct a major drug sting. The real truth is they really had no idea what they were doing. It was nothing more than a three-ring circus and the criminals were running the show.

The evidence submitted in court were two bags of so-called drugs. These bags had been tested for fingerprints and it is documented that my fingerprints were not on either of the bags. Now wouldn't this give inspectors and prosecutors the slightest clue? Salinas never testified that I wore gloves. The truth is, I never touched those bags and he knew it. He knew I was innocent.

On each of the transactions that Salinas informed Inspector Chavez of, Salinas was given instructions from Chavez as to where the buys were to go down. Each buy Salinas made was supposed to be witnessed by Chavez. Salinas advised Chavez as to the time and locations of said buys. Each buy was done alone by Salinas, as he always had an excuse as to why the time and location was changed. So of course Chavez never witnessed anything. He couldn't see that Salinas was merely pocketing the money.

Inspector Chavez testified that he nor anyone else ever searched Salinas for money or drugs at any time. Mr. Salinas informed Chavez that the second buy was going to be a split deal. Inspector Chavez states this in his investigative memorandum dated June 26, 1986.

Also stated in Chavez investigative memorandum, he states that he spoke with Salinas on February 27, 1986, at which time the informant told him that on February 14, 1986, I supposedly approached Salinas and offered to sell him cocaine. Why would it take Salinas 13 days to give Chavez such damaging evidence against me? Neither had a reason why. I can tell you why; it is because this conversation never took place. It was only another lie.

I know for a fact that Salinas is a criminal that stole thousands of dollars from the Postal Service. As God is my witness, I have never sold drugs of any kind to anyone, so the money Salinas claimed to have given me only went to himself and anyone else involved in this sham. I have my doubts about Inspector Chavez, also. His testimony was often also vague. His information he said came from his informant never matched what his informant testified to.

Example, at my preliminary hearing, Chavez testifies that he gave Salinas \$4,000 to make a buy. Chavez testifies that he and Salinas were in the vehicle when they exchanged money. Yet at my jury trial, Chavez testifies that at that time of the exchange of the \$4,000, there in fact was another inspector present in the vehicle to witness the exchange; yet Inspector Chavez cannot remember the name of the inspector present.

Both these statements were made under oath. Which one is the truth? Also, in Chavez' Investigative Memorandum dated June 26, 1986, he states that he drove himself to designated locations to observe buys going down. Yet at jury trial he testified, under oath again, that someone else always drove him to these locations, as he didn't want to be recognized. Again, Chavez cannot remember the name of this driver.

When is Chavez telling the truth and when is he lying? I assume Chavez must rank pretty high up in the Post Office to be allowed to conduct a drug sting. It scares me that someone so incompetent carries a job of distinction.

On October 18, 1987, we were informed that the jury had reached a verdict. I remember the jury verdict came in so fast—this definitely scared me. Along with word the verdict had come in, there was a request from the jury that they be able to read a statement with their verdict. Approval came from both sides and the judge. The judge ordered that we wait and read the verdict the next day.

On October 19, 1987, I was acquitted of all charges against me. After reading the verdict, the jury foreman also read a statement which stated the jury felt the case against me should have never come to trial, based on the evidence given. To my surprise, Judge Jones joined in and stated, "I agree with you wholeheartedly." He went on to say that he thought this was one of the lousiest jobs of investigations he had ever heard of. He was most upset that there was no corroboration between inspector and informant.

Judge Jones also urged jurors to write to the Postmaster General. Another quote from Judge Jones was, "Frankly, the idea of them throwing our money around so loosely, supposedly to buy drugs with no hope of getting it back, that deeply offends me."

I felt sure this was the end of the road. I was free and clear, only to learn I still had to go through another trial to try and get my job back. I was advised to go through the Merit System Protection Board, and boy, do I feel this was a great mistake. The trial was held on postal grounds. They still controlled this whole mess. I was found guilty by this single judge; yet I was found innocent by a Superior Court judge and jury of 12. I will never understand this injustice. At this trial, there was still not a single shred of evidence; only the word of informant Salinas and Inspector Chavez.

Unfortunately, I had to accept this decision, as I had no money to appeal it, as lawyer fees had already cost \$5,000, which my brother borrowed on my behalf. We just couldn't come up with any more money, which is a shame, because I know if I was able to take this matter to a higher court, I would have easily got my job back and all compensation due me.

I had no income whatsoever for almost 2 years. In fact, the Post Office also took me through an unemployment hearing, where I was denied any unemployment benefits. The Post Office made sure they did everything and anything to make my life hell. The worst part is, they got away with it. I have been with my present employer for almost 6 years, and I again have a good record, with no disciplinary action whatsoever, same as I did with the Post Office. In fact, back in December 1993, I was given a Special Achievement Award in recognition of notable performance along with a check for \$400 by the Postal Service.

I know I was done a great injustice. I know Salinas is a crook for sure, and I have serious concerns that people higher up in the Post Office such as Chavez could have also been involved. You have to see that this investigation was nothing more than a sham. There was no investigation, no professional people who knew what they were doing; just a group of inadequate people. The sad part about this whole thing is they got away with it. Salinas made a lot of money, and I wouldn't doubt that this criminal is still employed by the Post Office.

I am the first one to say if somebody is jeopardizing their job to sell drugs, then sure—get rid of them. I have kids of my own, and I certainly don't appreciate the criminals that make it all too easy for kids to get involved with that poison. I appreciate the fact that the Post Office is sending a strong message to drug dealers, as I have come to hate them more than anyone, but the message was sent to me and I paid for somebody else's crime.

I don't feel this disgrace should be allowed to happen to one more innocent person. There has got to be a way to control these stings with professional, adequate, and most of all, honest people running them.

If I was given my job back like I should have been eight years ago, I would have had 17 years with the Postal Service. I would be making a good living like I deserved, and I wouldn't just be getting by financially, as I am with my present employer.

I feel Congress should send a strong message to the Postal Service and advise them that these inadequate stings are just not acceptable and will not be tolerated, as innocent people like myself are the only ones getting hurt.

Thank you.

[The prepared statement of Mr. McDonald follows:]

PREPARED STATEMENT OF FRANK A. McDONALD, FORMER POSTAL SERVICE
EMPLOYEE

My name is Frank A. McDonald, I am a veteran of the U.S.M.C. and up until June 26, 1986, I was employed by the United States Post Office for nine years.

The date June 26, 1986 will always haunt me as it was one of the worst days of my life. Only to find out later it would only be one of many to come. On this date as I was just about to clock into my job at the Post Office I was approached by two Postal Inspectors. They asked me my name, I informed them and they in turn informed me that I was under arrest for violation of Health and Safety Code

11352-11355. My first instinct was they thought I had some kind of disease as they used the words Health and Safety. I even thought this was a joke but by the looks on their faces I knew it wasn't. I was immediately handcuffed and taken to my locker so it could be searched. Inspectors did not find what they were looking for so I was taken to an office where I was interrogated for hours. It was only then that I found out it was really Drug charges I was arrested on. I told them they were crazy and they had the wrong person. Inspectors claimed to have caught me "red-handed", so that I had better confess to this crime. I kept telling them they had the wrong person, and they could not have caught me "red-handed" with anything as I was innocent. They threaten me with everything they could think of, but nothing they could say would ever make me admit to something I didn't do or even knew anything about. After hours of going back and forth they finally got tired of me telling them they had the wrong person and that I was innocent. So inspectors advised me that I was now going to the County Jail. My only hold on sanity at this point was that I was sure they were going to find out they really had the wrong person and this mess would all be over with. Unfortunately this never happened and my nightmare had only just begun.

As Postal Inspectors escorted me out of the Post Office they very cleverly used the front doors, where it was no surprise to them that we were met by mass media. I can remember looking at the faces of Inspectors, in fact, I can still see the glow of pride they radiated. They were so sure they had caught the big bad criminal. Inspectors thinking they were so smart were nothing more than ignorant, as they were carting off an innocent man to jail and leaving the real criminal behind to watch the show. Inspectors enjoyed every bit of their fifteen minutes of fame.

I was booked into the County Jail and spent three days in jail before my family and friends could raise my bail money. Needless to say those three days were horrifying, as I have never been incarcerated before, in fact, I have never even had a traffic ticket. I have always distanced myself from trouble and before this disgrace I had the clean record to prove it.

After my release from jail, I spent months locked up in my apartment as I was afraid someone would recognize me from all the television coverage. I was afraid to show my face even though I was innocent.

Apparently this whole mess started when a man by the name of Gilbert Salinas contacted Postal Inspectors stating that he knew drugs were being sold on Postal grounds. Mr. Salinas volunteered to go under cover to try to identify the drug dealers. Of course this was a paying job for this unemployed so-called construction worker. Postal Inspectors planted Salinas in our Department at the Terminal Annex. It amazes me that Postal Inspectors felt this was an qualified informant. I would think some type of experience or training should be required.

I acquainted myself with Salinas the same way I acquainted myself to any other employee I worked with. We were never good friends just the usual friendship you acquire when working with someone eight hours a day. I remember him having a good sense of humor as he was always trying to make us laugh. The only money that ever exchanged between myself and Mr. Salinas was for food. Mr. Salinas almost every day volunteered to go out and pick up everyone's lunch, so if this makes me guilty so is everyone else in my department. I never found it odd that he always wanted to be the one to go out and pick up lunch as I noticed on several occasions Salinas leaving the building and looked for any excuse to get away. I didn't concern myself with this as it was none of my business, but I did figure he would get caught sooner or later. Other than everyday chit-chat we spoke of nothing else, especially drugs.

After this so called sting was over Salinas named me along with ten other employees. Salinas accused me of selling him approximately five thousand dollars worth of cocaine. This is a blaten lie as I have never sold him or anyone else any drugs. I didn't sell drugs, then, I don't sell them now, and I never will. To this say I wonder why Salinas chose me to destroy how did he make his decision to frame me? I know I will never know the answer, but what I do know for sure is he would do or say anything to protect himself as he was a criminal that should have been arrested and not me.

I was taken to trial in Superior Court, as Federal Prosecutors were they only one's with any smarts, they refused to press charges against me due to lack of evidence. Salinas testified under oath that I in fact did sell him cocaine. Yet Salinas got away with lying under oath and I have never sold him or anyone else anything. I'm sorry but I was never able to get a copy of the trial transcript due to lack of funds. The most disgusting part of this whole disgrace is there was never one single shred of evidence against me. You would think there would have to be some kind of proof, anything that would link me to this crime. The fact of the matter is there was never anything. There was no kind of surveillance of any kind, no cameras, no picture no

wires, no tapes nothing at all; just the good word of an lying, unemployed criminal with the record to prove it. I will never understand why inspectors felt this man could possibly be so honest, why in the world did they think this man was so close to God???? The only evidence against me was the word of Salinas and nothing else. The drugs that Salinas turned over to the Inspector Chavez never came from me as he claims. I'm sure they came from Salinas himself as the first batch was tested and proven to have 3.1 percent cocaine. The second batch had no cocaine. I honestly feel Salinas made these batches himself and kept the five thousand dollars Inspector Chavez gave him so freely. Through my whole trial the testimony between Inspector Chavez and informant Salinas almost never corroborated. The words "I'm not sure" and "I don't remember" were often used by these two professionals whom claim to be smart enough to conduct a major drug sting. The real truth is they really had no idea what they were doing, it was nothing more and a three ringed circus and the criminals were running the show. The evidence submitted in court were to two bags of so-called drugs. These bags had been tested for fingerprints and it is documented that my fingerprints were not on either of the bags. Now wouldn't this give Inspectors and Prosecutors the slightest clue? Salinas never testified that I wore gloves. The truth is I never touched those bags and he knew it, he knew I was innocent.

On each of the transaction's that Salinas informed Inspector Chavez of, Salinas was given instructions from Chavez as to where the "buy's" were to go down. Each "buy" Salinas made was supposed to be witnessed by Chavez. Salinas advised Chavez as to the time and locations of said "buy's." Each "buy" was done alone by Salinas, as he always had an excuse as to why the time and location was changed, so of course Chavez never witnessed anything, he couldn't see that Salinas was merely pocketing the money. Inspector Chavez testified that he nor anyone else ever searched Salinas for money or drugs at any time. Mr. Salinas informed Chavez that the second "buy" was going to be a split-deal (Inspector Chavez, states this in his Investigation Memorandum dated 6/26/86). Yet under oath and at trial Salinas states that he has never heard the term "split-deal." Also stated in Chavez' Investigative Memorandum he states that he spoke with Salinas on February 27, 1986, at which time informant told him that on February 14, 1986, I supposedly approached Salinas and offered to sell him cocaine. Why would it take Salinas thirteen days to give Chavez such damaging evidence against me? Neither had a reason why. I can tell you why, it's because this conversation never took place. It was only another lie.

I know for fact that Salinas is a criminal that stole thousand of dollars from the Postal Service. As God is my witness I have never sold drugs of any kind to anyone, so the money Salinas claimed to have given me only went to himself and anyone else involved in this sham. I have my doubts about Inspector Chavez also. His testimony was often also vague. His information he said came from his informant never matched what his informant testified to. Example, at my Preliminary hearing Chavez testifies that he gave Salinas four thousand dollars to make a "buy." Chavez testifies that just he and Salinas were in the vehicle when they exchanged money. Yet at my jury trial Chavez testifies that at that time of the exchange of the four thousand dollars there in fact was another Inspector present in the vehicle to witness the exchange, yet Inspector Chavez cannot remember the name of the Inspector present. Both these statement's were made under oath, which one is the truth? Also, in Chavez' Investigative Memorandum dated June 26, 1986, he states he drove himself to designated locations to observe "buy's" going down. Yet at Jury Trial he testifies under oath again, the someone else always drove him to these locations as he didn't want to be recognized. Again, Chavez cannot remember the name of the driver. When is Chavez telling the truth, and when is he lying? I assume Chavez must rank pretty high up in the Post Office to be allowed to conduct a drug sting. It scares me that someone so incompetent carries a job of distinction.

On October 18, 1987 we were informed that the Jury had reached a verdict. I remember the Jury's verdict came in so fast, this definitely scared me. Along with word the verdict had come in there was a request from the Jury that they be able to read a statement with their verdict. Approval came from both sides and the Judge. The Judge ordered that we wait and read the verdict the next day.

On October 19, 1987, I was acquitted of all charges against me. After reading the verdict the Jury Foreman also read a statement which stated the Jury felt the case against me should have never came to trial based on the evidence given. To my surprise Judge Jones joined in and stated "I agree with you wholeheartedly" he went on to say he thought this was one of the lousiest jobs of investigations he had ever heard of. He was most upset that there was no corroboration between Inspector and Informant. Judge Jones also urged Jurors to write to the Post Master General. Another quote from Judge Jones was "frankly the Idea of them throwing our money

around so loosely, supposedly to buy drugs, with no hope of getting it back, that deeply offends me."

I felt sure this was the end of the road. I was free and clear, only to learn I still had to go through another trial to try and get my job back. I was advised to go through the Merit System Protection Board, and boy do I feel this was a great mistake. The trial was held on Postal grounds, they still controlled this whole mess. I was found guilty by this single Judge, yet I was found innocent by a Superior Court Judge and a Jury of twelve. I will never understand this injustice. At this trial there was still not a single shred of evidence, only the word of informant Salinas and Inspector Chavez.

Unfortunately I had to accept this decision as I had no money to appeal it, as Lawyer fee's had already cost five thousand dollars, which my brother borrowed on my behalf. We just couldn't come up with anymore money, which is a shame because I know if I was able to take this matter to a higher court I would have easily got my job back and all compensation due me.

I had no income whatsoever for almost two years. In fact the Post Office also took me through an unemployment hearing where I was denied any unemployment benefits. The Post Office made sure they did everything and anything to make my life hell. The worst part is they got away with it. I have been with my present employer for almost six year and I again have a good record with no disciplinary action whatsoever, same as I did with the Post Office. In fact back in December of 1983 I was given a Special Achievement Award in recognition of notable performance, along with a check for four hundred dollars, by the Post Office.

I know I was done a great injustice. I know Salinas is a crook for sure and I have serious concerns that people higher up in the Post Office such as Chavez could have also been involved. You have to see that this investigation was nothing more than a sham. There was no investigation, no professional people who knew what they were doing, just a group of inadequate people. The sad part about this whole thing is they got away with it. Salinas made a lot of money and I wouldn't doubt that this criminal is still employed by the Post Office.

I'm the first one to say if somebody is jeopardizing their job to sell drugs, then sure get rid of them. I have kid's of my own and I certainly don't appreciate the criminal's that make it all too easy for kid's to get involved with that poison. I appreciate the fact that the Post Office is sending a strong message to drug dealers as I've come to hate them more than anyone, but the message was sent to me and I paid for somebody else's crime.

I don't feel this disgrace should be allowed to happen to one more innocent person. There has got to be a way to control these stings with professional, adequate, and most of all honest people running them.

If I was given my job back like I should have been eight years ago. I would have had seventeen years with the Postal Service. I would be making a good living like I deserved, and I just wouldn't be getting by financially as I am with my present employer.

I feel Congress should send a strong message to the Postal Service and advise them that these inadequate stings are just not acceptable and will not be tolerated, as innocent people like myself are the only one's getting hurt.

Mr. CLAY. Mr. McDonald, it is no consolation, but I will say to you that you were not the only victim that suffered from these kinds of what I consider to be criminal acts on the part of the employees of the U.S. Postal Service. But I want you to know that this committee will do all in its power to see that you are made whole.

I personally think that they ought to put you back to work and pay you for all of the years that you were off.

Let me ask you, you talked about the hours of interrogation initially when they came to the floor of the workroom and handcuffed you, took you somewhere. Did they read you your Miranda rights?

Mr. McDONALD. Not until we went to the—their office upstairs in the terminal annex.

Mr. CLAY. How long was that before they read you your rights?

Mr. McDONALD. Maybe one-half hour, 20 minutes after I was arrested.

Mr. CLAY. What happened—did they interrogate you?

Mr. McDONALD. No; I was escorted to my locker, which they confiscated everything in my locker and I was escorted to their office upstairs, which was in a different building from where I work.

Mr. CLAY. Before they started interrogation, they read you your Miranda rights?

Mr. McDONALD. No.

Mr. CLAY. How long did they interrogate you before they read you your rights or did they ever read you your rights?

Mr. McDONALD. They did upstairs before they started interrogating me.

Mr. CLAY. What impact did that July drug sting arrest have on you and your family? You lost your job?

Mr. McDONALD. Yes.

Mr. CLAY. Were you buying a home or car?

Mr. McDONALD. No; I was renting at the time. I wasn't married at the time. And I lost that. I had to move in with my mother and brother. Everything fell apart. I couldn't get a job, attorneys fees, took a lot out of me.

Mr. CLAY. You borrowed \$5,000 to pay the attorney initially?

Mr. McDONALD. My brother borrowed it from his work to pay for attorney fees.

Mr. CLAY. Prior to this incident and your arrest, did you have any work-related problems at the Postal Service?

Mr. McDONALD. No; I had no problems there at all. I got along with everybody. I did my job. I had a good time working there.

Mr. CLAY. Did you have any problems when you were in the Marine Corps?

Mr. McDONALD. Oh, no. I got honorably discharged from there. I had no problems there.

Mr. CLAY. Were you in battle?

Mr. McDONALD. No. I was stationed at Camp Pendleton for 3 years.

Mr. CLAY. How long did it take you to go to trial and be acquitted?

Mr. McDONALD. It was about 1 year.

Mr. CLAY. You were unemployed during the whole period?

Mr. McDONALD. Yes. I tried to get unemployment benefits. I think I connected a few weeks and the Post Office appealed, and I had to go through another hearing which they denied me any more unemployment benefits. It was hard getting a job, putting the Postal Service down. They see that and why were you fired from there and they see that and they want no part of you. It was hard to get a job.

Mr. CLAY. I assume that of your friends and relatives, some thought you were actually involved?

Mr. McDONALD. No; they supported me. If it weren't for my family and friends supporting me, I could have went off the deep edge. It was really hard on me.

Mr. CLAY. Thank you.

Mr. Sawyer.

Mr. SAWYER. Mr. McDonald, you were never able to reclaim your job at the Post Office?

Mr. McDONALD. No.

Mr. SAWYER. That is just beyond belief.

Mr. CLAY. But there are several hundred others in the same situation.

Mr. SAWYER. This is the same kind of story that we heard in Cleveland.

Mr. McDONALD. I went through all the steps and was denied on the Merit System Protection Board. He was acquitted—

Mr. SAWYER. You were found innocent, there were no other charges against you, and no violations of the rules of the Postal Service. It seems to me, Mr. Chairman, that there is a problem here. Not only with the Inspection Service and the way this entire operation was carried out, but with the process of adjudication and the assurance of employment rights within the Postal Service itself.

Ms. NORTON. Would the gentleman yield?

Mr. SAWYER. Yes.

Ms. NORTON. Was there a decision written by the MSPB indicating its grounds?

Mr. McDONALD. They just found that they believed the informant over me.

Ms. NORTON. There is a lower standard of proof at an administrative hearing than in a criminal proceeding, so it is not unusual to have a different decision rendered even though it is counterintuitive and contradicts our notion of justice.

I believe it would be useful if Mr. McDonald would submit for the record a copy of the MSPB decision so we can see if these are deep-seated problems that go further.

[The information referred to follows:]

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
SAN FRANCISCO REGIONAL OFFICE

FRANK A. MCDONALD,)
Appellant,)
)
v.)
)
UNITED STATES POSTAL SERVICE,)
Agency.)
)
DOCKET NUMBER
SF07528810073
DATE: February 24, 1988

Richard P. Fox, Esquire, Los Angeles, California, for the
appellant.

Excel Hunter, Los Angeles, California, for the agency.

BEFORE

F. Lamont Liggett
Administrative Judge

INITIAL DECISIONINTRODUCTION

Appellant timely appealed an agency decision removing him from employment. The Board has jurisdiction over such appeals. See 5 U.S.C. §§ 7511-7513.

For the reasons set forth below, the agency's decision is AFFIRMED.

ANALYSIS AND FINDINGS

The agency removed appellant based on the following charges: possession and sale of a narcotic (cocaine) on postal property, and conduct unbecoming a postal employee. The

specifications underlying the charges allege that during February and March of 1987, appellant while on postal property offered to sell and ultimately sold cocaine, on two separate occasions, to a coworker, Gilbert Salinas. Some background is necessary.

During 1985 and 1986, Robert Chavez, a U.S. Postal Inspector in the Los Angeles Division was assigned as a task force leader for narcotics investigations in the Los Angeles area. The task force received information that employees assigned to the Los Angeles Post Office Vehicle Maintenance Facility (VMF) were selling controlled substances while on duty. Inspector Chavez conducted his investigation at the VMF with the aid of a confidential informant, Gilbert Salinas. Throughout the agency's investigation at the VMF, Salinas comported himself as a normal postal worker, while allegedly agreeing to purchase illegal drugs from his coworkers.

At the Board hearing, Salinas testified that he bought a substance purported to be cocaine from appellant while on postal property on two separate occasions during March 1986. Specifically, the witness testified that on February 14, 1986, appellant approached him and stated that he knew that "he (Salinas) had been purchasing cocaine" and that "he (the appellant) could get Salinas a good deal." Thereafter, Salinas testified that appellant approached him on February 27, 1986, and offered to sell him either one-half pound or one-quarter pound of cocaine, suggesting a price of \$6,400.00 for the one-quarter pound. Salinas testified that the next

day appellant approached him and offered to sell him 2 ounces of cocaine for \$4,000.00. At this point Salinas, testified that Inspector Chavez instructed him to make arrangements to buy the 2 ounces of cocaine from appellant. Salinas testified that on March 3, 1986, he gave appellant \$4,000.00 in the tool and parts room of the VMF at approximately 2:00 p.m., and was told that the cocaine would be delivered the following day in the post office parking lot at approximately 2:00 p.m.

Salinas testified further that on March 4, 1986, at approximately 2:00 p.m., while he was clocking in to work, appellant signaled him and pointed to a work order located on a desk next to where appellant was standing. According to Salinas, under the work order he found a plastic bag, and inside the plastic bag was another plastic bag containing a white chunky powder. The witness testified that he turned the plastic bag and its contents over to Inspector Chavez.

On March 12 and 13, 1987, Salinas testified that appellant approached him, and again offered to sell him cocaine. According to Salinas, on March 12, 1987, appellant offered to sell him 2 ounces of cocaine for a price of \$3,500.00. The witness testified further that on March 13, 1987, appellant offered to sell him one-half ounce of cocaine for a price of \$1,000.00. Salinas testified that he conveyed the latter offer to Inspector Chavez, he was authorized by Chavez to accept it. He testified further that he gave appellant \$1,000.00, on March 13, 1987, at approximately 4:15 p.m., and

was told by appellant that he would receive the cocaine the following day in the agency parking lot. Finally, Salinas testified that the cocaine was not delivered on the 14th of March, but rather, at approximately 2:03 p.m., on March 17, 1987.

Inspector Robert Chavez, corroborated Salinas' testimony that two drug transactions occurred between him and appellant on March 3-4, and March 13-17, 1987. The witness also testified that the metal structure of the VMF building prevented him from wiring Salinas with a hidden tape recorder, and that he did not personally have an opportunity to observe the drug transactions. Nonetheless, Inspector Chavez confirmed giving Salinas a total of \$5,000.00 of the agency's funds in cash to make the two drug buys from appellant. Inspector Chavez also confirmed Salinas' testimony that he (Salinas) kept him fully apprised of the ongoing status of each drug transaction with appellant. On this issue, Inspector Chavez testified that Salinas signaled him after each transaction was completed and that he personally spoke with Salinas after each drug transaction. Further, Inspector Chavez testified that Salinas was administered a polygraph examination after each drug transaction with the appellant, and that Salinas passed both examinations with

respect to the pertinent questions regarding his drug transactions with appellant.¹

With respect to the contents of the alleged drugs sold to Salinas, both Salinas and Inspector Chavez testified that they were subsequently informed by the agency's laboratory analysis that the substance allegedly received from appellant on March 4, 1987, contained 3.1% cocaine hydrochloride and weighed 70.17 grams, while the substance allegedly received from appellant on March 17, 1987, contained no controlled substance. See Appeals File, Tab 2C.

Finally, Inspector Chavez testified that he had used Salinas as an undercover informant to buy illegal drugs from eleven other employees at the VMF. Additionally, Inspector Chavez testified that Salinas had assisted him as an undercover informant in eighteen similar drug buys at the Santa Ana, California postal facility, and two drug buys at the Glendora, California postal facility. According to Inspector Chavez, throughout all of his numerous undercover investigations with Salinas, he found him to be a very trustworthy and reliable informant.

The agency also relied on an investigative memorandum prepared by Inspector Chavez. The investigative memorandum essentially memorializes the alleged negotiations between Salinas and appellant regarding the two drug transactions;

¹ I have accorded little weight to the results of the polygraph examinations, since the agency failed to lay a proper foundation for its submission. See *Meir v. Department of the Interior*, 3 M.S.P.R. 247 (1980).

details the results of each transaction (i.e., time, place, and amount of drug/money involved); and documents the laboratory analyses of the substances allegedly received from appellant.

In response to the evidence presented by the agency, appellant steadfastly denies either offering to sell or selling drugs to Salinas. Further, appellant testified that he never discussed the buying or selling of drugs with Salinas at any time. Appellant conceded that Salinas was an acquaintance of his and further acknowledged that he considered Salinas a friend. Further, the parties stipulated that appellant was (found not guilty) in Los Angeles Superior Court of a two-count felony violation of the California Health and Safety Code §§ 11352 and 11355 (sale of a controlled substance (cocaine) - one count) and (unlawful sale, transportation, etc., of a controlled substance, pursuant to agreement - one count).

Because the only direct evidence on the essential elements of the charges consists of the testimonies of Salinas and the appellant, this case turns on the credibility of those two witnesses. In brief, the issue is whether to credit the testimony of Salinas or the absolute denials of the appellant.

In deciding to credit Salinas' testimony over appellant's, I have considered the following factors. First, although Inspector Chavez did not personally witness the transactions between appellant and Salinas, he did confirm and

corroborate Salinas's testimony regarding specific details of the two transactions (i.e., times, places, amounts).

Further, I find appellant's testimony regarding the agency's recoupment of \$5,000.00 from his retirement annuity as an offset for the money paid to him by Salinas inconsistent with the documentary evidence of record, and wholly improbable in view of all the circumstances of this case. On this matter, the evidence shows that on August 25, 1987, appellant received a certified letter from Inspector Chavez. The letter clearly advised appellant that as a result of the agency's losses in the purchase of controlled substances from him, he was indebted to the agency for the sum of \$5,000.00. The letter also clearly advised appellant that unless he reimbursed the agency within 30 days or requested a reconsideration of its decision, the amount would be set-off from contributions in his retirement annuity. Appellant was also advised that if the agency's reconsideration decision was unfavorable, he could request a *de novo* evidentiary hearing. See Agency Ex. Q.

It is undisputed that appellant failed to request either reconsideration of the agency's decision or an evidentiary hearing. Moreover, at the Board hearing, and despite acknowledging having received and read the letter, appellant testified that he was unaware that the agency had recouped \$5,000.00 from his retirement annuity. In view of the clear and unambiguous statements in the letter regarding the agency's intended course of action, including the dates, time

limits and consequences of inaction, I find appellant's testimony on this issue less than credible. Indeed, appellant's testimony that he knew he did not justly owe the money and, therefore, based on the advice of his representatives, he simply chose to do nothing, strains credibility.

I also find the evidence attesting to the background, motivation, and prior conduct of Salinas sufficient to enhance his overall credibility. On this issue, both Salinas and Inspector Chavez gave the following consistent testimony. Salinas, an unemployed construction worker was recruited by the agency in 1984, after a postal carrier, while on duty, attempted to sell him drugs. This incident disturbed Salinas and he subsequently reported it to the Postal Inspectors hotline. After some conversations, the Inspectors offered to employ Salinas in regular postal jobs, where he would function as an undercover agent.

It is undisputed that Salinas functioned in such a capacity for about 3 years, working on a variety of undercover drug assignments throughout Southern California. During his tenure with the postal service, Salinas received a regular salary for his actual postal duties, plus bonuses from the Inspectors. He was employed at the Los Angeles VMF from October 1985 to June 1986. During this period, he developed evidence which led to the removal of twelve postal employees for illegal drug-related activities. Prior to his assignment at the VMF, Salinas participated in a total of twenty similar

undercover drug buys at postal facilities in Santa Ana and Glendora, California.

Though appellant could proffer no reason why Salinas would falsely accuse him of selling cocaine, it is arguable that Salinas was motivated to fabricate the evidence in order to receive additional bonuses. And, although favorable, the record of the other cases against employees at the VMF is not conclusive as to Salinas' credibility. Of the eight cases adjudicated to date, there have been three guilty pleas, one conviction, and four acquittals (including the appellant's). None of the employees who have sought administrative review of their removals have prevailed. See Agency Exs. M, N, O.

I have also considered that any fabrication discovered in Salinas' testimony would have led to his immediate termination and possible prosecution. This is especially noteworthy since the evidence involved criminal prosecutions, and Salinas faced the requirement of passing a polygraph examination after each transaction, as well as cross examinations by professionals in court. Additionally, the record contains sworn affidavits from two attorneys attesting to Salinas' demeanor and credibility while testifying in the various criminal prosecutions which preceded this hearing. See Agency Exs. Tabs K and L. Finally, because Salinas developed such a significant number of cases at the VMF, he would have had to engage in substantial fabrications in order to appreciably affect his case production.

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With regard to the evidence supporting appellant's credibility, the record contains several letters from coworkers and friends attesting to his honesty and integrity. Further, I note that he has no prior criminal record. However, after carefully reviewing all of the collateral evidence presented regarding the credibility of both witnesses, the inconsistent and improbable testimony of appellant concerning the agency's recoupelement action, and the corroborative testimony of Inspector Chavez, I credit Salinas' testimony over the appellant's. Further, the record is devoid of any evidence that Inspector Chavez had any motive to fabricate his testimony. In short, considering the totality of evidence presented, I find appellant's absolute denials less worthy of belief. Indeed, I find it improbable that a fabricated story would have contained the number, manner, and specificity of details provided in this matter. Accordingly, I find that the agency has proved the charged conduct by preponderant evidence. The charges are sustained.

Efficiency of the Service and Penalty Determination

The sustained charges establish that appellant made contact and sold illegal drugs to a coworker while on duty. Such on-duty misconduct obviously impacts upon service efficiency and warrants discipline. See *Dietz v. Department of the Army*, 29 M.S.P.R. 13, 14 (1985).

A final issue concerns the reasonableness of the removal penalty. The Board has the authority to mitigate such a penalty. See *Douglas v. Veterans Administration*, 5 M.S.P.R.

280 (1981). However, an agency has significant discretion to act within the bounds of reasonableness, and the Board will not disturb the penalty if it is the maximum reasonable penalty imposed considering all relevant factors. See *Beard v. General Services Administration*, 801 F.2d 1318 (Fed. Cir. 1986).

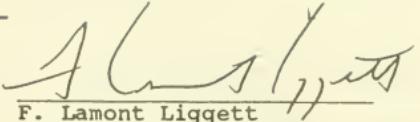
The record shows that appellant has been employed by the agency for approximately 10 years and has an unblemished work record. However, the sustained charge was serious, and the resulting arrests brought extensive adverse media coverage to the agency. See Agency Ex. F. Further, the misconduct was repetitive and appellant was clearly on notice that such conduct constituted a violation of state and federal laws, as well as agency regulations. See Agency Ex. J. Moreover, the fact that the second transaction did not involve the sell of any controlled substances, does not vitiate the seriousness of appellant's misconduct. Finally, I find that appellant's fabricated testimony before the Board effectively undermines any potential for rehabilitation. Thus, despite appellant's length of service and work record, I find no reason in mitigation sufficient to disturb the agency's decision in this matter.

In sum, considering the seriousness of the sustained charges, I find that appellant's removal does not exceed the limits of reasonableness. See *Douglas* at 306.

DECISION

The agency's action is AFFIRMED.

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F. Lamont Liggett
Administrative Judge

FOR THE BOARD:

NOTICE TO APPELLANT

This initial decision will become final on March 30, 1988, unless a petition for review is filed by that date or the Board reopens the case on its own motion. This is an important date because it is the last day on which you can file a petition for review with the Board. The date on which the initial decision becomes final also controls when you can file a petition for review with the Court of Appeals for the Federal Circuit. The paragraphs that follow tell you how and when to file with the Board or the federal court. These instructions are important because if you wish to file a petition, you must file it within the proper time period.

BOARD REVIEW

You may request Board review of this initial decision by filing a petition for review. Your petition for review must state your objections to the initial decision, supported by references to applicable laws, regulations, and the record. You must file your petition with:

The Clerk of the Board
Merit Systems Protection Board
1120 Vermont Avenue, N.W., Suite 802
Washington, D.C. 20419

Your petition must be postmarked or hand-delivered no later than the date this initial decision becomes final. If you fail to provide a statement with your petition that you have either

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mailed or hand-delivered a copy of your petition to the agency, your petition will be rejected and returned to you.

JUDICIAL REVIEW

If you are dissatisfied with the Board's final decision, you may file a petition with:

The United States Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, D.C. 20439

You may not file your petition with the court before this decision becomes final. To be timely, your petition must be received by the court no later than 30 calendar days after the date this initial decision becomes final.

NOTICE TO AGENCY/INTERVENOR

The agency or intervenor may file a petition for review of this initial decision in accordance with the Board's regulations.

CERTIFICATE OF SERVICE

I certify that the attached document(s) was (were) sent by regular mail today to:

Appellant

Frank A. McDonald
1181 S. Garfield
Monterey Park, CA 91745

Appellant's Representative

Richard P. Fox, Esq.
9911 W. Pico Blvd., Suite 1030
Los Angeles, CA 90035

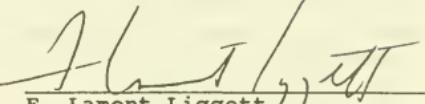
Agency Representative

Excel Hunter
U.S. Postal Service
900 E. Gage Avenue
Los Angeles, CA 90052

Other

Timothy M. Dirks
Office of Personnel Management
Employee Relations Division
1900 "E" Street, N.W., Room 7635
Washington, DC 20415

Date: February 24, 1988


F. Lamont Liggett
Administrative Judge

Mr. SAWYER. I appreciate the gentlelady's comments. It seems to me that the injustice that has been done here is ongoing. Mr. Chairman, I would be pleased to be of whatever help, not only in this case, but in some of the others that we have heard about where there is a continuing injustice.

Mr. CLAY. We had similar testimony in West Palm Beach where the individuals that went before the Merit System Protection Board also lost, after they were exonerated in court, and it is—their testimony was that there was kind of a friendly relationship between the Postal Service people and the judge that was adjudicating—

Mr. McDONALD. That is how it was in my case. It was like they knew each other and were long lost friends when they met, the judge and people on the Postal Service side talking about what they were going to do later on.

Mr. CLAY. They went to lunch together?

Mr. McDONALD. Yes.

Mr. CLAY. At West Palm Beach, the judge went to lunch with the Postal Inspector and was picked up by the inspectors at the airport and transported to and from the hearing. In one case, postal management refused to let a witness off—they made him work overtime so he would miss the hearing of the individual that had been exonerated in court.

These are things that have been taking place across the country in the name of postal inspectors who think that they are above the laws of this country. We are going to do something about it if I have my way.

Mr. SAWYER. Thank you, Mr. Chairman.

Mr. CLAY. Mrs. Morella.

Mrs. MORELLA. I agree with what my colleagues have said. It seems as though the MSPB rendered a ruling, you went to court, were found innocent, you went back to MSPB to look at the appeal, and they refused to do it, and on those grounds, and you were not allowed to go back to your position.

Mr. McDONALD. Yes.

Mrs. MORELLA. That doesn't make sense in terms of justice. What happened to Mr. Salinas?

Mr. McDONALD. I don't know where he is at. I wish I could get hold of him though.

Mrs. MORELLA. Did he go to court?

Mr. McDONALD. I don't know where he is at right now. I think he just disappeared.

Mrs. MORELLA. It might be an interesting follow-up to find out what happens to those informers who are paid to do that.

Mr. CLAY. I don't know how we could get the information. The Postal Service has been very uncooperative in submitting requested information to this committee.

Mrs. MORELLA. Well, we can ask again, specifically request it. What about the unions? Tell me how the union has helped or not helped you.

Mr. McDONALD. They helped me a lot. They recommended I go to the Merit Protection Board.

Mrs. MORELLA. Did you have to pay for the attorney yourself?

Mr. McDONALD. Yes. I started with one attorney and he wanted additional money which I couldn't afford, so I had to get another attorney.

Mrs. MORELLA. You were pretty much on your own?

Mr. McDONALD. Yes. I had help from my family and friends, but I still owe people money that helped me out, my sister-in-law.

Mrs. MORELLA. So even though ultimately in court you won the case, there was never any payment back for any of the damages or legal fees?

Mr. McDONALD. No.

Mrs. MORELLA. What would you like to see this committee do?

Mr. McDONALD. Straighten out the way the Inspection Service works and get people there that know what they are doing and do the job right, so innocent people like myself don't get fired from their job and hurt like I was. There are some criminals out there and there are some innocent people like ourselves—

Mrs. MORELLA. If there are any other internal steps that we should take or look at, would you let us know? This might be a suggestion that the committee would want to look at?

Mr. McDONALD. Yes.

Mrs. MORELLA. Thank you for coming before us.

Mr. CLAY. Ms. Norton.

Ms. NORTON. Thank you, Mr. Chairman.

Mr. McDonald, have you or do you know if any of the others who have been discharged from the Postal Service as a result of these renegade sting operations have brought civil action?

Mr. McDONALD. No; I don't know.

Ms. NORTON. Do you recall if the statements of the trial judge and the jury foreman in your case indicating that—indeed admonishing the Postal Service for bringing such weak cases to court—do you recall whether that evidence was presented or allowed during the MSPB hearing?

Mr. McDONALD. Yes; it was. But still they took the word of the informant over me.

Ms. NORTON. Mr. Chairman, I must say, if the Postal Service is as indicated in your earlier statement refusing to provide information, normally there is an inference when somebody refuses to be forthcoming of wrongdoing, and I think that in the absence of information from the Postal Service, we should embrace that inference and see what further action, including statutory action, needs to be taken to control these operations that clearly are outside of the law.

Mr. CLAY. Thank you.

Mr. Hastings.

Mr. HASTINGS. I would be very brief. Thank you and all of the Members, and thank you for holding this hearing.

Mr. McDonald, was there a court reporter like the lady here at your MSPB hearing?

Mr. McDONALD. Yes; there was.

Mr. HASTINGS. Did you ever get a copy of the transcript?

Mr. McDONALD. Yes.

Mr. HASTINGS. How long was the hearing in actual time?

Mr. McDONALD. A couple of hours, not more or less.

Mr. HASTINGS. How long was your trial?

Mr. McDONALD. One day.

Mr. HASTINGS. Did you have a lawyer at the merit hearing?

Mr. McDONALD. Yes; I did. He was specialized in merit system protection.

Mr. HASTINGS. Did he cross-examine Salinas?

Mr. McDONALD. Yes, he did.

Mr. HASTINGS. Was he the same lawyer that cross-examined Salinas at your trial in Federal court?

Mr. McDONALD. No.

Mr. HASTINGS. Mr. Chairman, I have no further questions or comments at this time. I agree with all our colleagues, that it is an abomination to have conducted this kind of proceeding.

Mr. CLAY. Thank you for your testimony, Mr. McDonald.

Mr. McDONALD. Thank you for having me.

Mr. CLAY. Next witness is George Dorn. Mr. Dorn, your entire statement will be put into the record and you may proceed as you so desire.

STATEMENT OF GEORGE DORN, FORMER POSTAL SERVICE EMPLOYEE

Mr. DORN. Thank you. My name is George Dorn. I am 37 years old.

I was a mail handler at the Minneapolis Postal Service from May 1988 to May 1992. I was fired from my job for getting a person named James Frye small amounts of marijuana.

I first met James Frye at the post office shortly after my wife died of brain cancer in October 1989. I was very depressed and emotionally upset when I met him, for my wife had died a slow, painful death and I had cared for her in our home for about 1 year while she underwent unsuccessful radiation and chemotherapy treatments.

At that time, she required 24-hour care and became totally bed-ridden. I refused to put her in a nursing home. Throughout the year before I met James Frye, all my time had been devoted to my wife's care. I had to carry her to the bathroom, administer medication, and when she passed away, she only weighed 78 pounds.

Most of my coworkers at the post office left me alone when I came back from her funeral because they knew how depressed I was. James Frye, however, approached me when I had gotten back. He had just started as a casual worker and he worked the same shift I did. The first day I met James Frye, he asked me for a ride home and said he would pay me \$5. I agreed to give him a ride. The next night he asked again and I agreed. That night he pulled out a joint of marijuana and asked if I had smoked pot. I said occasionally, and we smoked it.

The next night, I gave him a ride again. He pulled out another joint and we smoked it. He told me it was his last joint, and wanted to know if I could get him some. I told him I would check around, but I had no intention of getting him any.

As the weeks went on, he kept asking me out to go drinking with him. One night, he took me to a local bar and bought me drinks all night. That night, he said he had heard a rumor that my wife died of brain cancer and he wanted to know if that was true. I said it was. This was also the same night I met his girlfriend Erika.

As our so-called friendship developed, I told him that my wife had smoked pot during chemotherapy. He then told me he had glaucoma and used pot like medicine. He continued to smoke his pot with me after work and always kept bugging me to get him some. He called it medicine. In fact, he did have an eye condition. He had called me almost daily asking if I could get him some pot.

I would like to tell you about the first time I got him a small amount of pot. It was around April 1990. Jimmy had told me his birthday was coming up and he was going to a concert and would buy me a concert ticket if I drove. He regularly told me I had to get out and have some fun to get over my wife's death. A few days later, he brought the tickets for the concert to work and said, now all we need is some pot; can you get some?

At that point, I felt obligated to do so and did get him one-quarter ounce of marijuana. A day or two before the concert, he said he needed more pot. He said his girlfriend's car was going to be repossessed and she needed some pot to sell to make money to keep from losing her car. He had also told me his girlfriend, Erika, who later I found out was an undercover police officer, was going to set me up with a girlfriend of hers if I got her the pot. Jimmy had been insisting I needed to find a woman to have sex with to overcome my grief.

Unfortunately, I did get him a couple more ounces. I hated doing this. I was not a drug dealer and did not want to be involved in these deals, but over the months, it seemed like Jimmy really cared about my emotional well-being and I had begun to view him as my best friend. I continued to hang out with Jimmy. I even took him fishing, drove him to and from work, often confided with him about the emotional difficulties I had about my wife, even telling him when I went to visit her grave.

When we went out, he tried to get me to use cocaine and crack on several different occasions. I refused. He tried to get me to give money to prostitutes he knew in exchange for sex so they could buy crack. Again, I refused. He always bought all my drinks and paid my way for everything.

The times I did get pot for Jimmy, I never made any money on it. I merely thought I was doing a friend a favor. I did it out of a misguided sense of friendship.

When I was arrested April 3, 1991, while at work, I had learned that 12 other mail handlers had also been arrested. When we left the post office in handcuffs all in a group, the Postal Service had apparently notified all the television and media, who were waiting to photograph us for the 10 p.m. news.

The next day, the local paper ran nearly a one-half page photo on the front page. The only connection among those arrested was James Frye, yet the way the Inspection Service stated the arrest, the public was left with the impression that a large scale drug ring had been busted. In fact, in the 1½ years that Frye harassed postal employees for drugs, the Inspection Service netted only about 2.5 pounds of marijuana and one-half gram of cocaine.

After my arrest, I hired an attorney for \$10,000. He had told me to plead guilty to the felony charge in Federal court and he would get it reduced to a misdemeanor by a rule 35 motion and I would save my job. The motion was denied. Later, I had learned rule 35

had been repealed several years earlier and even if it had not, such a motion could not reduce a felony to a misdemeanor.

After I lost my job and became a felon for life, I was forced to go on welfare for 11 months. That was quite humiliating, since I had been working my whole life. It took me 22 months to find a job, and now because of my felony conviction, my chances of getting decent employment have been destroyed. I was a hard worker at the post office and liked my job.

I feel workers should not be encouraged to do wrong by secret Government informants in the name of friendship. I knew many of the people who were fired as a result of James Frye. Some of them lost their homes, all lost their livelihood and chances for good future employment. I hope that you see Frye's actions devastated the lives of many good people.

There are a couple of things I don't have in my statement I would like to say. On three different occasions, James Frye had gotten me some marijuana, sold me marijuana and also, Jimmy Frye had been scamming the postal inspectors for the times he did get them marijuana, the amounts were always short and he was always overcharging the Postal Inspection Service, so he was scamming them also.

That is all I have to say. Thank you for your time and for allowing me to come here.

[The prepared statement of Mr. Dorn follows:]

PREPARED STATEMENT OF GEORGE DORN, FORMER POSTAL SERVICE EMPLOYEE

My name is George Dorn. I am 37 years old. I grew up and have lived my whole life in Minnesota. I am a high school graduate.

I was a mail handler for the Postal Service from May, 1988 to November 1992. I was fired from my job for getting a person named James Frye small amounts of marihuana

I met James Frye at the post office shortly after my wife died of brain cancer in October of 1989 after my leave for her funeral. I was very depressed and emotionally upset when I met him. My wife died a slow painful death, and I had cared for her in our home for about one year while she underwent unsuccessful radiation and chemotherapy treatment. She became totally bedridden, but I refused to put her in a nursing home. Throughout the year before I met James Frye, all my time had been devoted to my wife's care. I had to carry her to the bathroom, administer medication. When she died, she only weighed 78 pounds.

Most of my co-workers at the post office left me alone when I came back because they knew how depressed I was.

James Frye, however, approached me right when I got back. He had just started as a casual worker, and I worked the same shift as him. The first day I met him, he asked me for a ride home and said he would pay me \$5.00. I agreed to give him a ride. The next night he asked again, and I agreed. That night, he pulled out a joint and asked if I smoked pot. I said occasionally. The next night I gave him a ride. He pulled out another joint, and we smoked it. He said it was his last pot and wanted to know if I could get some. I told him I would check around but did not have any intention of getting him any.

As the weeks went on, Jimmy kept asking me out. He took me to a local bar and bought me drinks all night. That night he said he heard my wife had died of brain cancer and he wanted to know if that was true. I said it was.

As our so-called friendship developed, I told him that my wife had smoked pot during chemotherapy. He told me he had glaucoma and he used pot like medicine. He continued to smoke his pot with me after work and always kept bugging me to get him some. He called it "medicine," and he did in fact have an eye problem. He called me almost daily asking if I could get him pot.

The first time I got him a small amount of pot, around April of 1990. He had told me it was his birthday coming up and he was going to a concert and would buy me a ticket if I drove. He also, as he began to do on a regular basis, told me I had to get out and have some fun to get over my wife's death.

A few days later, he brought the tickets for the concert to work and said, "Now all we need is some pot. Can you get any?" I felt obligated to do so and did get one-quarter of an ounce.

Before the concert, he said he needed more pot. He said his girlfriend's car was going to be repossessed and she needed some pot to sell to make money to keep from losing it. He had also told me his girlfriend "Erika" (who later I learned was an undercover police officer) was going to set me up with a girlfriend of hers. Jimmy had been insisting I needed to find a woman to have sex with to overcome my grief.

Unfortunately, I did get him a couple more ounces. I hated doing this. I was not a dealer and did not want to be involved in these deals, but over the months it seemed like Jimmy really cared about my emotional well-being and I had begun to view him as a best friend. I was lonely and very sad.

I continued to hang out with Jimmy. I took him fishing, drove him around and confided with him about the emotional difficulties I had about my wife, even telling him when I visited her grave.

When we went out, he tried to get me to use cocaine and crack. I refused both. He tried to get me to give money to prostitutes he knew in exchange for sex so they could buy crack. He always bought the drinks.

The times I got pot for Jimmy I never made any money on it. I did it out of a misguided sense of friendship.

When I was arrested, the postal inspectors brought me to the post office. I learned that 12 other mail handlers had also been arrested and brought there.

We left the post office in handcuffs in a group. The postal service had apparently notified all the television and print media who were waiting to photograph us for the 10 p.m. news. The inspectors even opened the door of the paddy wagon so a photographer who came late could get his shot. The next day the local newspaper ran a nearly half page photo on the front page.

The only connection amongst those arrested was James Frye. Yet the way the inspection service staged the arrest, the public was left with the impression a large scale drug ring had been busted. In fact, in the year and a half that Frye worked on people, the inspection service netted only about two and one-half pounds of marijuana and one-half gram of cocaine.

I hired a lawyer for \$10,000. He told me to plead guilty to the felony in federal court and he would get it reduced to a misdemeanor by a Rule 35 motion, and I would save my job. The motion was denied. Later, I learned Rule 35, in most part, had been repealed years earlier and even if it had not such a motion could not reduce a felony to a misdemeanor.

After I lost my job and became a felon, I was forced to go on welfare for 11 months. I was humiliated. I worked my whole life since I was 15 years old. It took me 22 months to find a job and now, because of my felony conviction, my chances of getting a job similar to the post office has been destroyed.

I was a hard worker and liked my job at the post office. I feel workers should not be encouraged to do wrong by secret government informants in the name of friendship. I know many of the people who were fired as a result of Frye. Some lost their homes, and all lost livelihoods and chances for good future employment. I hope you see that Frye's actions devastated the lives of many good people.

Mr. CLAY. Mr. Dorn, how long did you work for the Post Office?

Mr. DORN. Four years.

Mr. CLAY. Had you ever been in trouble prior to the drug sting?

Mr. DORN. No, sir.

Mr. CLAY. When Mr. Frye was encouraging you to purchase marijuana for him, were you seeing a doctor, under a doctor's care?

Mr. DORN. Yes, I was. At the time of my arrest, I was seeing a psychiatrist for grief and depression counseling. He knew about it.

Mr. CLAY. You discussed that with him?

Mr. DORN. Right.

Mr. CLAY. And he continued to pressure you into purchasing narcotics for him?

Mr. DORN. That is correct.

Mr. CLAY. You say that 12 of you were handcuffed at the same time?

Mr. DORN. Thirteen.

Mr. CLAY. Thirteen—you and 12 others. Do you know what happened to the other 12?

Mr. DORN. One, I think, was acquitted and got his job back and the rest, I am sure, never got their jobs back. I think most people received probation. I received 1 year probation.

Mr. CLAY. About half of them were exonerated in court?

Mr. DORN. I think so, if I am not mistaken.

Mr. CLAY. What type of job do you have today?

Mr. DORN. Currently, I am working construction, just kind of on and off. I might work 6 weeks and then I might be off for 1 week or 2 weeks at a time before they have another job.

Mr. CLAY. Do you know if Mr. Frye still is working for the Postal Service?

Mr. DORN. I am not sure of that.

Mr. CLAY. Mr. Sawyer.

Mr. SAWYER. Mr. Dorn, I don't have any questions for you. The kind of thing that we have all expressed with regard to the kind of testimony that Mr. McDonald offered and that you offer now continue to apply. The way you were taken advantage of at a time when you were perhaps most fragile, as fragile a moment as a man can face in life, it is very difficult to reconcile with any sense of justice.

I am sure that all of us express a sense of regret and apology. Thank you.

Mr. DORN. Thank you.

Mr. CLAY. Mr. Hastings.

Mr. HASTINGS. Mr. Chairman, I echo the sentiments of my colleague, Mr. Sawyer, and I have no questions at this time.

Mr. CLAY. Thank you. Getting back to the court case, some of those individuals were not convicted in court. Others possibly would not have been convicted, but it is the understanding of this committee from information that we have received, evidence we have received, that a witness possibly would have played a major role in exonerating those who were convicted had the Postal Service not pressured that witness and intimidated that witness into not showing up to testify.

These are the kinds of activities, illegal as hell, that the Inspection Service has been involved in for the last 10 years in their so-called professional sting operations.

Mr. Dorn, we want to thank you for your testimony and we are going to do all we can to see that you are made whole.

Mr. DORN. Thank you very much.

Mr. CLAY. Thank you.

The next witness is Mary de la Forest. Welcome to the committee. Your entire statement will be put in the record.

STATEMENT OF MARY de la FOREST, POSTAL SERVICE EMPLOYEE

Ms. DE LA FOREST. Thank you. Chairman DeLay, Members of the committee, thank you for providing me with this opportunity to testify at this oversight hearing.

For the record, I wish to state that I am here today not as a representative of the U.S. Postal Service but as a citizen who has been victimized by the Postal Service and the Postal Inspection Service.

I have been employed by the Postal Service since 1987 as a mail handler at the Minneapolis Main Post Office in Minneapolis, MN.

The Postal Service and Inspection Service hired James Frye in 1990 for the purpose of encouraging other postal employees to deal in illegal drugs and use and possess drugs on postal property. The Postal Service and Inspection Service knew Mr. Frye had an arrest record and a history of selling and using illicit drugs yet falsified employment records to justify Mr. Frye's employment.

I worked on Saturday as a group leader at the main post office. Mr. Frye worked the same shift with me. Mr. Frye new I was in recovery for alcohol abuse and nevertheless tried to involve me in drinking and drugging. It was known among the other workers that Frye smoked marijuana in and about the facility and was always talking to people trying to get them to smoke with him.

On one occasion, Mr. Frye offered to pay me for a ride home. Mr. Frye's driver's license was suspended and he was living in a work house and he was on the Hubert law. When I dropped him off, he gave me some money and dropped a pill in my hands. Later, I called my sister who was a nurse and found that the pill was Darvon. I got really mad that Mr. Frye tried to mess up my sobriety in giving me a controlled substance.

On April 3, 1991, 13 postal workers were arrested by postal inspectors on drug charges. When I learned that the arrests were based on the informant work of Mr. Frye, I was shocked that the Postal Service would use the likes of James Frye to investigate postal employees. I wrote a note to the local mail handlers union and told them about the time Mr. Frye had tried to give me drugs. This man posed a threat to my health and my postal job.

The union told postal management of my complaint about Frye. Mr. Frye took great exception to my complaint about him. On June 10, 1991, Mr. Frye twice accosted me at the main post office, hurling loud, vulgar language at me. Although I had a witness to this incident, postal inspectors refuted my allegations. Later I was called to testify in several of the criminal trials of arrested postal workers. I testified in the trial of Jeffery Larson and he was acquitted on an entrapment defense.

Further, after I filed criminal assault charges against Mr. Frye, Postal Inspector Callinan wrote to the assistant city attorney, Karl Van D'Elden, and mischaracterized the incident by saying I precipitated the confrontation and also told Mr. Van D'Elden how important it would be to drop the charges before Frye testifies in any drug sting trials.

Also, Frye once more harassed me in June 1991 by following me home. Neither postal managers or inspectors took any action to discipline Mr. Frye or protect me.

On September 9, 1991, I attended a court appearance made by Mr. Frye in connection with his misdemeanor prosecution by the City of Minneapolis. While there, I was watched and followed by a U.S. postal inspector. Thereafter, Postal Service inspection agents summoned me to a meeting at their office. I brought along a mail handler, Johnny Rodriguez, as a witness.

Assistant U.S. Attorney Chris Bebel and Inspector Jerome Smith questioned about my knowledge of James Frye and arrested postal workers. I was questioned about my presence in court that day and

about any future testimony I may be called to give. Mr. Bebel and Inspector Smith used this meeting to intimidate me and they tried to make me sign an agreement not to testify in future trials. I refused to sign anything and left the meeting.

On September 30, 1991, the charges I had filed against Mr. Frye were dismissed by the city of Minneapolis. Inspector Callinan had been successful in undermining my case against Frye. During July and August of 1992, the U.S. Postal Service management and postal inspectors without justification watched, spied, and photographed me at work and elsewhere.

All this has caused me great harm. I have suffered lost wages, benefits, physical and emotional stress and sickness, fear, humiliation and mental anguish. In fact, I fear that my testimony here today will cause further harm and retaliation. I truly believe that the Postal Service and the Inspection Service will find some way to get me. I have done nothing wrong and only wish to work my postal job without fear and harassment, reprisals and retaliation from Postal Service or nefarious characters like James Frye brought in to prey upon postal workers under the guise of law enforcement.

Thank you. I will be pleased to answer any questions you have.
[The prepared statement of Ms. de la Forest follows:]

PREPARED STATEMENT OF MARY DE LA FOREST, POSTAL SERVICE EMPLOYER

Chairman Clay, members of the Committee, thank you for providing me this opportunity to testify at this oversight hearing. For the record I wish to state that I am here today not as a representative of the United States Postal Service but as a citizen who has been victimized by the Postal Service and the Postal Inspection Service. I have been employed by the Postal Service since 1985 as a mail handler at the Minneapolis main post office in Minneapolis, Minnesota.

The Postal Service and Inspection Service hired James Frye in 1990 for the purpose of encouraging other postal employees to deal in illegal drugs and use and possess drugs on postal property. The Postal Service and Inspection Service knew Mr. Frye had an arrest record and a history of selling and using illicit drugs yet falsified employment records to justify Mr. Frye's employment.

I worked on Saturdays as an acting supervisor at the main post office. Mr. Frye worked the same shift with me. Mr. Frye knew I was in recovery for alcohol abuse and never-the-less tried to involve me in drinking and drugging. It was known among the other workers that Frye smoked marijuana in and about the facility and was always talking to people trying to get them to smoke with him. On one occasion Mr. Frye offered to pay me for a ride home. Mr. Frye's driving license was suspended and he was living in a halfway house. When I dropped him off he gave me some money and dropped a pill in my hand. Later, I called my sister who is a nurse and found that the pill was Darvon. I got really mad that Mr. Frye tried to mess up my sobriety by giving me a controlled substance.

On April 3, 1991 thirteen postal workers were arrested by Postal Inspectors on drug charges. When I learned that the arrests were based on the informant work of Mr. Frye I was shocked that the Postal Service would use the likes of James Frye to investigate postal employees. I wrote a note to the local mail handler's union and told them about the time Mr. Frye had tried to give me drugs. This man posed a threat to my health and my postal job. The union told Postal management of my complaint about Frye. Mr. Frye took great exception to my complaint about him. On June 10, 1991 Mr. Frye twice accosted me at the main post office hurling loud, vulgar language at me. Although I had witnesses to this incident, Postal Inspectors refuted my allegations. Later, I was called to testify in several of the criminal trials of arrested postal workers. I testified in the trial of Jeffrey Larson and he was acquitted on an entrapment defense.

Further, after I filed criminal assault charges against Mr. Frye, Postal Inspector Callinan wrote to assistant City Attorney Karl Van D'Elden and mis-characterized the incident by saying I precipitated the confrontation and also told Mr. Van D'Elden how important it would be to drop the charges before Mr. Frye testifies in any drug sting trials. Also, Frye once more harassed me in June, 1991 by following

me home. Neither Postal managers or inspectors took any action to discipline Mr. Frye, or protect me.

On September 9, 1991 I attended a court appearance made by Mr. Frye in connection with his misdemeanor prosecution by the City of Minneapolis. While there I was watched and followed by a U.S. Postal Inspector. Thereafter, Postal inspection service agents summoned me to a meeting at their office. I brought along a mail handler, Johnny Rodriguez, as a witness. Assistant United States Attorney Chris Bebel and Inspector Jerome Smith questioned about my knowledge of James Frye and arrested postal workers. I was questioned about my presence in court that day and about any future testimony I may be called to give. Mr. Bebel and Inspector Smith used this meeting to intimidate me and they tried to make me sign an agreement not to testify in future trials. I refused to sign anything and left the meeting.

On September 30, 1991 the charges I had filed against Mr. Frye, were dismissed by the City of Minneapolis. Inspector Callinan had been successful in undermining my case against Frye.

During July and August, 1992 USPS management and postal inspectors, without justification, watched, spied on and photographed me at work and elsewhere. All of this has caused me great harm. I have suffered lost wages and benefits, physical and emotional stress and sickness, fear, humiliation, and mental anguish. In fact, I fear that my testimony here today will cause further harm and retaliation. I truly believe that the Postal Service and the Inspection service will find some way to get me. I have done nothing wrong and only wish to work my postal job without fear of harassment, reprisals and retaliation from the Postal Service or nefarious characters like James Frye brought in to prey upon postal workers under the guise of law enforcement.

Thank you. I will be pleased to answer any questions you may have.

Mr. CLAY. Thank you. I would hope that the Postal Service leadership has enough sense not to try and harm you for testifying before this committee today. In fact, I would advise them not to try and harm you.

Let me ask you this: Did you testify at any trial other than Jeffrey Larson's trial involving James Frye?

Ms. DE LA FOREST. I did. I testified at one other trial.

Mr. CLAY. Which one was that?

Ms. DE LA FOREST. Paul van Slike.

Mr. CLAY. Was he exonerated?

Ms. DE LA FOREST. He was found guilty.

Mr. CLAY. Why didn't you testify at the other trials?

Ms. DE LA FOREST. I guess I really couldn't take it anymore. It was very nerve-wracking and I feared retaliation.

Mr. CLAY. You mentioned that Frye used illicit drugs on postal property and he attempted to sell drugs to other employees?

Ms. DE LA FOREST. Yes; he did.

Mr. CLAY. Did anybody ever report this to supervisors?

Ms. DE LA FOREST. To the best of my knowledge, I don't know. I don't think so.

Mr. CLAY. But it was common knowledge among the employees that he was attempting to sell?

Ms. DE LA FOREST. Yes.

Mr. CLAY. And you stated that he solicited other workers into using drugs?

Ms. DE LA FOREST. Yes, he did.

Mr. CLAY. That was common knowledge, which means that his supervisor should have known?

Ms. DE LA FOREST. Yes.

Mr. CLAY. This is another frightening, disheartening case.

Mr. Hastings.

Mr. HASTINGS. The U.S. attorney and the postal inspector that queried you, did you or anyone on your behalf file any kind of complaint against the U.S. attorney that intimidated you?

Ms. DE LA FOREST. Will you say that again?

Mr. HASTINGS. My understanding from your testimony is that you felt intimidated by the U.S. attorney who sought to have you sign a statement that you would not testify in the future trials. Did you ever file any kind of complaint against him?

Ms. DE LA FOREST. Against the postal inspector?

Mr. HASTINGS. No, the U.S. attorney.

Ms. DE LA FOREST. I don't believe I did, no.

Mr. HASTINGS. When you were in that questioning by he and the postal inspector, did you have an attorney?

Ms. DE LA FOREST. No, I didn't.

Mr. HASTINGS. Did they say anything to you about your right to have one?

Ms. DE LA FOREST. No; they didn't. They made fun of the witness that I had brought with me. They asked me if I was afraid of them and what did I think they were going to do to hurt me.

Mr. HASTINGS. From her testimony, the thing that I find most offensive, Mr. Chairman, is anyone in a prosecutorial posture taking advantage of a witness who may well be beneficial to those who are being prosecuted by that individual. I appreciate Ms. de la Forest for coming forward and join you in suggesting that it would be unwise for anyone to intimidate her further with regard to her testifying before this committee.

Thank you.

Mr. CLAY. Thank you for testifying. It has been very helpful to us.

The next witness is Mr. Kenneth Hunter, the chief postal inspector. Good morning and welcome to the committee. Your entire statement, Mr. Hunter, will be included in the record at this point and you may proceed as you so desire.

STATEMENT OF KENNETH J. HUNTER, CHIEF POSTAL INSPECTOR, U.S. POSTAL SERVICE; ACCOMPANIED BY JEFF DUPILKA, DEPUTY CHIEF INSPECTOR—CRIMINAL INVESTIGATIONS; ANDREW CLEMONS, INSPECTOR, INTERNAL AFFAIRS DIVISION; AND IRA CARLE, INSPECTOR-IN-CHARGE, CLEVELAND DIVISION

Mr. HUNTER. Good morning, Mr. Chairman and members of the committee. I am Ken Hunter, chief postal inspector. With me are inspector-in-charge Ira Carle of the Cleveland division; Andy Clemons, postal inspector, internal affairs division; and Jeff DuPilka, deputy chief inspector, criminal investigations.

With your permission, I would like to briefly summarize my statement for the record.

Late in January 1993, shortly after becoming chief postal inspector, I learned that improper handling of a series of employee narcotics trafficking investigations in Cleveland, OH, had led to innocent people being accused of crimes they did not commit. Today, I again want to apologize to all the victims. This was wrong. It never should have happened.

The internal investigations which followed found that two inspectors had not followed prescribed procedures and that their supervisors had failed to adequately oversee their operations. We have taken disciplinary action internally and the informants have been prosecuted.

First among our immediate concerns was to assist those who had been wronged. Many groups worked with us to respond to their needs. With the help of local officers of the National Association of Letter Carriers, affected employees were reinstated and received back pay. Unfortunately, this process took too long.

We also took steps to expunge the related criminal records of those victims who wanted this done. Twelve of the falsely charged individuals have filed tort claims against the Postal Service and a committee of senior postal managers has been established to ensure prompt equitable review of their claims. Clearly, this episode has injured innocent individuals and tarnished the reputation of the Postal Inspection Service. We cannot undo what was done, but we are working hard to respond to the needs of those who were wronged and learn more from our mistakes.

Today I hope we may start the process of rebuilding your confidence in our organization of dedicated men and women. The Postal Inspection Service has overhauled its narcotics investigation procedures as a result of the unfortunate incidents which have come to light. As outlined in more detail in my statement, with the help of a task force of law enforcement and legal experts, we have put in place a thorough review system for these investigations, including quality control procedures, restrictions on individuals who may be used as informants, and tightened controls over financial expenditures.

We have added specialized training and also taken steps to address the concerns of many of us and this committee about the racial overtones of this failed operation in Cleveland and our employee drug investigations in general.

In addition to the GAO investigation requested by this committee, I have asked for an external assessment of our arrests in all internal cases. Deputy Chief Inspector Recie Springfield will lead a team to further examine ways to avoid bias in our work. I want to assure you that racial bias will not be tolerated in the Postal Inspection Service in its investigations or its hiring or its promotion procedures.

To this end, last June we started an extensive training program for all of our employees that encourages valuing diversity. We have also focused our recruitment efforts to ensure that our work force mirrors the customers we serve. Mr. Chairman, we are working hard to learn from our mistakes and make changes to prevent them in the future. Your staff has devoted substantial time and effort to this matter and has often pointed the way to possible solutions.

At this point, I would like to deviate to say that after hearing the concerns today, I am concerned that we need to go beyond the steps outlined in my statement. I am therefore declaring a moratorium on the use of outside confidential informants on future employee narcotics investigations until we work out a more acceptable solution.

Thank you.

[The prepared statement of Mr. Hunter follows:]

PREPARED STATEMENT OF KENNETH J. HUNTER, CHIEF POSTAL INSPECTORS, U.S. POSTAL SERVICE

Good morning, Mr. Chairman and members of the Committee. I am here to discuss the narcotic enforcement operations of the Postal Inspection Service. With me at the table are Ira Carle, the Inspector in Charge of our Cleveland Division, Andrew Clemons, an inspector from our Internal Affairs Division, and Jeff DuPilka, Deputy Chief Inspector—Criminal Investigations.

In January 1993, shortly after becoming Chief Postal Inspector, I learned that a series of employee narcotics trafficking investigations in Cleveland had not been properly handled. The result was that innocent postal employees and private citizens were wrongly accused.

Immediately upon learning of these problems, I ordered an internal investigation. The investigation disclosed that two inspectors had failed to follow our prescribed procedures and that their supervisors had failed to adequately oversee the investigations and that we need to revise our procedures and strengthen our controls.

Throughout this unfortunate episode, one of our major concerns has been the impact these events had on innocent people. I traveled to Cleveland in an attempt to meet with the employees who had been wrongly accused as a result of our investigations. Understandably, the employees were incensed over these events and refused then and on other occasions to meet with me. As an alternative, I met with local officers of the National Association of Letter Carriers (NALC) which represents most of the affected employees. These officials were very helpful on behalf of the victims. Subsequently, I sent letters of apology to the employees who had been unjustly removed from their positions and set up a process to reimburse them for their legal expenses. Reimbursement of the legal expenses incurred by those who had been falsely accused was provided on an expedited basis through Ira Carle, our new Inspector in Charge in Cleveland, again with assistance from the NALC. All of the employees who requested reimbursement of legal expenses have received it.

Today, I would like to again extend apologies to all those who were wrongly accused.

Postal managers and officers of the NALC also worked together to reinstate the affected employees and see that they received back-pay. Two of the twenty-two employees who had been removed as a result of these investigations were not reinstated because they had been convicted of other, unrelated charges.

We have initiated action to expunge the related criminal records of the victims. Consent to take this action was not received from one individual, and three individuals objected and requests on their behalf were withdrawn.

Twelve individuals who were charged during these narcotics investigations (eleven employees and one non-employee) have filed administrative tort claims against the Postal Service. Documentation has been requested of the individuals. In order to ensure prompt, equitable, and efficient review of the claims when documentation is received, a committee of senior postal managers has been established.

We recognize that this episode has not only hurt innocent individuals but also tarnished the reputation of our organization and lessened the high regard in which this Committee long held our Service. My hope is that today we may start the process of rebuilding the Committee's confidence in our work.

To this end, I would like to discuss the efforts we have made to learn from our mistakes in Cleveland and explain the revised procedures and increased controls we have put into place to prevent the recurrence of a situation like this and to enhance the overall quality of our efforts to prevent drug trafficking in the Postal Service.

The Department of Justice has noted that the workplace has become a major source of illegal drugs. A publication entitled "Combating Workplace Drug Crimes" produced by the Bureau of Justice Assistance noted on page 1:

"How many employers realize that the workplace has become one of the safest places in America to buy and sell drugs? Do employers recognize that drug sales and use by employees result in lost productivity, higher overhead costs, and employee theft and embezzlement? And do law enforcement agencies realize that targeting workplace drug trafficking can be an effective component in their overall antidrug efforts?"

"With millions of U.S. workers being drug users, where do they get those drugs—from street dealers? No! According to drug enforcement experts, most workers obtain illicit drugs at or around their workplace from coworkers.

"Illegal drug use by workers has a negative impact on job performance and company profits. The National Institute on Drug Abuse reports that the typical drug-abusing worker was five times more likely to file a claim for workers' compensation, involved in accidents almost four times more often than other workers, and on sick leave twice the normal level and late to work three times more often than nonabusing employees."

The Postal Service sponsored a Symposium on Workplace Violence, here in Washington, D.C. last December. In the course of the seminar, Dr. Dale Masi, an international authority in the employee assistance field, noted the correlation between violent acts and the use of alcohol and other drugs:

"Whether they are an alcohol or drug addict is not the question. It is the violent actions caused by the use of alcohol and drugs that is the problem. No employer today can afford not to look at this situation."

The 1992 Postal Service Employee Opinion Survey confirmed that drug abuse in the workplace is perceived to be a problem by postal employees, and that perception was reaffirmed by them in 1993 survey data. We share the concern of postal employees that drug dealing and use in the postal work environment should not be tolerated.

Investigation is one of the ways used by the Postal Service to combat employee drug trafficking. The authority to conduct such investigations carries with it a responsibility to do so correctly. That responsibility, coupled with the expectation of the employees of the Postal Service that theirs will be a safer and more crime-free work environment in the future, requires that we provide diligent and professional attention to this problem. This is particularly true since other law enforcement agencies could not assign these cases high priority because of their already heavy workloads. Moreover, the illegal transactions primarily occur on postal property and involve quantities of drugs normally associated with "street-level trafficking."

One of the most effective ways of investigating workplace drug violations is also one of the most controversial—the use of informants. This technique is widely used by law enforcement agencies to conduct drug investigations. If not properly controlled, it can have unacceptable consequences such as occurred in our Cleveland employee drug investigations.

In the early 1980s when we first conducted these types of investigations, we did so by placing undercover postal inspectors in the workplace. This effort was not particularly successful because inspectors were not readily accepted into the drug scene by those possessing or selling drugs. We then turned to the use of informants who were able to more quickly assimilate into the day-to-day drug activity at the facility where they were placed. In many cases, we recruited as informants individuals who had been successfully used by other law enforcement agencies. Given appropriate training in the postal work environment, informants were generally able to identify postal employees engaged in illegal drug transactions much more promptly than undercover postal inspectors. In many instances, inspectors are then introduced to the dealer for the purpose of conducting "hand-to-hand" buys.

While it is true that the Cleveland employee drug investigations failed because our confidential informants established an elaborate scheme of fictional drug "buys" and falsely identified persons from whom they reportedly obtained drugs, the scheme could not have succeeded if we had done our job properly.

Based upon our internal investigations, administrative action was initiated to remove the two inspectors responsible for the investigation, and disciplinary actions were initiated against a team leader and two Inspection Service managers. Since the inspectors' appeals are pending, I would prefer not to comment on the record concerning the specific charges. In addition, the investigative findings were presented to the Department of Justice and the United States Attorney in Ohio for a determination of whether federal prosecution of the inspectors was appropriate. The facts were also supplied to state prosecutors in Cuyahoga County, Ohio, for their consideration as to whether state laws had been violated. No prospective action has been initiated as of this time.

Prosecution was initiated against the informants who were responsible for concocting the elaborate scheme to deceive inspectors and prosecutors and victimize innocent people. Four were convicted. A fifth informant was granted immunity in consideration for his cooperation with the prosecutors. Charges are pending against a sixth.

Our assessment after the internal Affairs Division investigation of the Cleveland cases was that our procedures needed expert review and modification. In order to identify ways in which our employee drug investigation procedures might be improved, we formed a taskforce comprised of two inspectors in Charge, a number of subject matter experts, attorneys, crime laboratory personnel and an outside consultant, Mark Schlein, an experienced Narcotics Division commanding officer from

the Broward County, Florida, Sheriff's Office. The task force met with federal, state, and local law enforcement agencies to benchmark our instructions, training, and investigative focus against theirs and make certain that we are using the most up-to-date techniques in our employee drug investigations and in our procedures for handling confidential informants. The task force also met with representatives of private sector companies to determine how other large employers handle drug problems involving their workforce.

Based upon the initial efforts of the taskforce, in June 1993, interim instructions were issued which required our field divisions to establish the following controls:

Each division established a committee of senior inspectors to review all employee narcotics cases to ensure the quality of those investigations.

No case will be presented for criminal or administrative action until reviewed by the committee. Cases which fail to meet guidelines are returned for further work and resubmitted for review.

We've instructed all of our field divisions to update the background information on informants. The names of those who are not to be used in the future are entered into an automated database, along with an explanation of the reason the informant is not to be used.

All suspected controlled substances purchased during investigations are to be submitted to the National Forensic Laboratory for analysis.

Lab personnel are notifying the field division manager when substances submitted fall outside established norms. In these instances, managers are reviewing the case with the appropriate inspector.

The revised instructions concerning the handling of substances purchased will help prevent the mistakes which occurred in Cleveland from happening elsewhere. In these investigations, the informants were buying and turning in a very low-grade drugs. The quality of the drugs should have raised questions in the minds of the inspectors and their supervisors. Instructions now require field testing of all purchased substances (unless the entire suspect sample would be destroyed in the test) and the submission of suspect substances to the National Forensic Laboratory. Notification to field divisions and the follow-up attention by division management provides needed safeguards.

Our investigative instructions have been expanded and compiled into a "Confidential Informant and Internal Crimes Handbook." These instructions now contain extensive investigative techniques and program requirements. The handbook also contains a set of checklists for the Inspector in Charge, team leader, and investigating inspector regarding the control and supervision of informants and investigative requirements.

The new instructions also focus attention upon oversight by Inspection Service managers, training of inspectors, accounting and control of funds paid to informants and/or funds used for the purchase of controlled substances. Drafts of these publications have been referred to the drug Enforcement Administration and the General Accounting Office—Office of Special Investigations for review and comment. Copies have also been furnished to the Committee's staff.

An important part of these instructions covers the procedures to be applied before an individual can be used as an informant. We are requiring a more thorough background review, including fingerprinting, to conduct the best possible criminal history check. Supervisors and field division managers must review and approve the enrollment of an individual in the informant program. Once accepted, Inspectors in Charge approve all significant changes in the status of informants.

The Committee's review of our employee drug investigations raised concerns about the character of informants. I, too, am concerned about the people we introduce into the postal workplace. To address this, we have improved the process to be followed when evaluating informants.

Inspectors must verify the reliability and credibility of informants before using information gained from them in any criminal or administrative proceeding.

Independent corroboration of information provided by informants is required. Informants must be polygraphed when no other verification is possible.

Informants must be polygraphed when questions arise about their credibility.

Expenditures exceeding the set spending authority of the Inspectors in Charge must be approved at Headquarters by the Deputy Chief Inspector for Criminal Investigations.

Supervisors must formally evaluate informant performance quarterly.

Inspectors in Charge must assess the effectiveness of the entire division informant program quarterly.

Headquarters review of the national program is performed quarterly.

The Deputy Chief Inspector for Criminal Investigations is responsible for national oversight of the program.

All Inspection Service managers responsible for supervising employee drug investigations have received newly-developed specialized training in the supervision of these kinds of investigations. In addition, we are piloting a two-week joint training program with the Drug Enforcement Administration which, if successful, will be provided to all inspectors receiving employee narcotics investigation assignments. Moreover, inspectors assigned to conduct employee drug investigations will attend annual seminars which will provide them with continuing professional education in narcotics investigations.

Simultaneously with the internal investigation of the Cleveland case and the improvement of our procedures, the Postal Service enhanced the Employee Assistance Program to help drug-abusing employees obtain counseling to overcome their problems. In addition, the Inspection Service is working with postal managers to help employees handle personal problems of all types in an effort to prevent criminal behavior. This two-pronged attack of assistance and enforcement is the most sensible approach to the problem, for without removing dealers, other employees will still be potential victims.

Another step taken to preclude the recurrence of this type of situation is the implementation of a Quality Assurance Review function. This concept resulted from a review of the Inspector General operations of the Inspection Service and from benchmarking we performed of the internal review procedures of the Federal Bureau of Investigation and the Secret Service. An intensive review of the operations of each of our field divisions and Headquarters units will be conducted at least every three years at each site. The field divisions are also required to conduct self-assessments of their operations on an annual basis and to advise me of their findings. Two field division reviews have already been conducted. Our Quality Assurance Review function, among other things, assures that the procedures the divisions are to follow in employee drug investigations are being followed. In addition, we have an Internal Affairs Division which will continue to investigate allegations of impropriety on the part of Inspection Service employees.

I would also like to address a concern you have expressed, Mr. Chairman, about the racial overtones of our employee drug investigations. This is a concern for me, too.

The Committee has asked the General Accounting Office to investigate this. We are cooperating with them fully. I also asked for an independent assessment. I look forward to learning the results of the both inquiries.

I want to assure the Committee that racial bias will not be tolerated in the Postal Inspection Service. To that end, in June 1993 we started an extensive training program which all of our managers and supervisors are attending to encourage the valuing of diversity. To date, 618 individuals have received this training, including all of our managers and 429 of our supervisory level inspectors. Our goal is to provide this training to all of our employees; and, to that end, we have added Valuing Diversity training to our basic training curriculum for new inspectors.

Mr. Chairman, we have worked to learn from the mistakes we made in Cleveland. We've adopted controls, changed procedures, trained employees, and worked to raise the overall quality of our efforts in this most difficult area. The time and attention your staff has devoted to this effort have been substantial and have often pointed the way to possible solutions. Thank you for that input.

For over 200 years, the women and men of the Postal Inspection Service have proudly served the people of this country. Their work has earned a reputation for professionalism and excellence. Cleveland has been a setback for the Inspection Service, but we are working to reestablish the confidence of this Committee and postal customers nationwide. I would be pleased to answer any questions you may have.

UNITED STATES POSTAL SERVICE,
Washington, DC, June 8, 1994.

Hon. WILLIAM CLAY,
Chairman, Committee on Post Office and Civil Service, U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: During the Committee's May 12, 1994 hearing on the Investigative Procedures of the U.S. Postal Service, the Committee asked the Inspection Service to review our employee drug investigations in West Palm Beach, Los Angeles and Minneapolis to determine the quality of the investigations and whether any postal employees removed from duty as a result of those investigations should be

returned to duty. Congressman Hastings asked that he receive a report on the review of the West Palm Beach cases within 30 days. The Committee also asked that we review the procedures of other law enforcement agencies regarding payment for confidential information and monetary recognition of outstanding performance on the part of agents and that we determine whether two confidential informants once used by the Inspection Service continue to be employees of the Postal Service.

Since the hearing, we have initiated efforts to develop the information the Committee sought. At this point, a conclusion has not been reached with respect to many of these inquiries. However, this memorandum will serve as an interim report to advise the Committee of the progress which has been made.

WEST PALM BEACH, FLA

The Postal Service is in the process of reviewing the dismissals of three employees: Jose Rodriguez, Charles O'Neal, and Anthony Fields. We have encountered difficulty obtaining necessary transcripts of the administrative proceedings relating to the removal of these individuals. This problem arose since the storage retention period for the records expired. Despite this difficulty, transcripts relating to two of the individuals have recently been located, efforts are continuing to locate the third transcript.

LOS ANGELES, CA

A team of postal inspectors currently is completing a review of the Los Angeles employee narcotics investigation. The investigation initially focused upon the allegations made by Mr. Frank McDonald at the hearing. It has been expanded to cover all cases in which the informant, Mr. Gilbert Salinas, was involved.

MINNEAPOLIS, MN

Since Ms. de la Forest has both a pending suit and a \$1 million tort claim against the United States arising out of this investigation, a senior Law Department attorney has reviewed the allegations made at the hearing by Ms. de la Forest and Mr. George Dorn. The attorney interviewed the inspectors involved in the investigation and also discussed the allegations with representatives of the Department of Justice.

In addition to the investigations identified above, the Inspection Service will discuss at a mid-June meeting of our senior managers procedures to identify and then review any other employee narcotics investigations that may be in doubt. The investigations in cities which have been identified as a concern to the Committee will continue to receive particular attention.

The results of all reviews will be presented to the committee of senior postal managers which has been established specifically to review claims arising out of the employee narcotics investigations. The committee's next scheduled meeting is on June 10, 1994.

As conclusions are reached in each of these reviews, the Committee will promptly be notified of the results.

The Committee asked that we determine whether the informants, Gilbert Salinas and Robert Gilbert continue to be employed by the Postal Service. We have determined that they are not.

The Committee also questioned the propriety of our inspectors obtaining information from the Employee Assistance Program. We have met with the Employee Relations Department of the Postal Service and agreed to issue instructions to all postal employees, including inspectors, to ensure that confidential information relating to postal employees who have sought EAP counseling is not used to initiate drug investigations. The instructions will limit inspectors to obtaining general information concerning drug problems occurring in a facility as distinguished from information concerning a specific employee.

At the request of the Committee, the Inspection Service representatives have met with the Federal Bureau of Investigation; the Bureau of Alcohol, Tobacco and Firearms; and the U.S. Park Police concerning their respective policies regarding payment for confidential information and for awarding agents for exceptional performance. The Inspection Service is evaluating the information received and will, by July 1, 1994, make any appropriate changes in procedures to make sure that our procedures are consistent with those generally accepted by other law enforcement agencies.

Sincerely,

K.J. HUNTER.

Mr. CLAY. Thank you, Mr. Hunter. It is one thing to declare a moratorium, but the basic question is: Why are you involved in narcotics investigations in the beginning? No other agency of government investigates narcotics within its jurisdiction. They turn it over to DEA.

Why is the Postal Service any different?

Mr. HUNTER. The Postal Service is extremely large and we have a memorandum of understanding, as you are probably aware, with regard to the investigation by the Inspection Service. I think at the time that memorandum was established, and it precedes me, there was probably a concern that the DEA did not have the resources to devote to these types of cases.

Mr. CLAY. It may be extremely large. Is it as large as the Defense Department?

Mr. HUNTER. I believe the Defense Department, including people in uniform, is larger.

Mr. CLAY. Without the people in uniform, it is not as large as the Defense Department, and why do they not have their own narcotics investigators? Large is not the reason. There is another reason. First of all, you are not equipped to do it, you are not trained, you don't know how to process these cases. That is why we have specialists; DEA is our specialist in the Government. So it is not a question of placing a moratorium; it is a fundamental question of whether or not you ought to be in the business of investigating narcotics.

You were established to protect the sanctity of the mail and the employees, to protect the employees. Bringing in paid informants and trying to entrap those employees is not, in my opinion, a way of protecting the mails or the employees.

Mr. McDonald testified on page 4 of his testimony that a jury foreman and a judge had reprimanded the process, the procedure used in some pretty critical and harsh terms. And specifically, they were very critical of Inspector Chavez.

Is Inspector Chavez still employed by the Postal Service?

Mr. DUPILKA. Mr. Chairman, yes, he still works for us. Not at the Los Angeles Division.

Mr. CLAY. Is he still an inspector?

Mr. DUPILKA. Yes, he is.

Mr. CLAY. Was anything ever done to him? Was he disciplined, was he transferred, was he retrained?

Mr. DUPILKA. The cases he was involved in were reviewed by senior management. The procedures used were criticized. He is no longer working in a narcotics assignment and he was counseled about conducting investigations in a more professional fashion.

Mr. CLAY. You mean a jury of 12 people and a judge listened to testimony under oath and they found this man to be lacking in integrity and training and professionalism, and senior management then reviewed the case and found absolutely nothing wrong, and he is still employed after these other people have lost their jobs, have suffered greatly financially and physically and emotionally, and this individual who did all these things is still working as an inspector?

Mr. Hunter, would you think something is wrong with a system that permits that?

Mr. HUNTER. Much of the information that I heard today from the witness was new information to me and I do think that it requires a thorough internal review. I am not prepared at this point to draw a conclusion because, again, my first exposure to that information, to that statement was this morning.

I would like to comment on one thing you said as regards the military. They do have internal investigative units because when we encountered this difficulty, one of the individuals I went to for advice was retired Maj. Gen. Eugene Cromartie because of his investigative experience and because of the fact that he is African-American.

I asked for his advice with regard to investigations and the racial issues and he provided advice, including the offer of suggestions with regard to training in the military with regard to drug programs, which we took advantage of.

Mr. CLAY. I think the gentleman misheard what I said. I did not mention the military. I said the Defense Department civilian component.

Mr. HUNTER. Oh, I am sorry.

Mr. CLAY. Also, Mr. McDonald was very critical, and should have been, rightly so, of this paid informant Salinas. Is he still working for the Postal Service?

Mr. HUNTER. Not to my knowledge.

Mr. DUPILKA. Mr. Salinas is no longer employed by us.

Mr. CLAY. When was his service terminated?

Mr. DUPILKA. It was after this event, I believe, in the late 1980s. I don't have the exact date, Mr. Chairman.

Mr. CLAY. Mr. Hunter, my letter requesting your appearance today asked for an explanation of your narcotic enforcement operations from 1984 to 1992 including oversight. Your statement, your prepared statement, does not address this at all.

Did you bring the information that we had requested, or are you prepared to explain these operations for those years and your oversight of them?

Mr. HUNTER. Yes; we are. Obviously, I didn't personally exercise oversight at that time, but when the Cleveland incident came to light, we took significant steps to change the procedures. But it is one of the things that I asked that we be prepared to share with you and Jeff DuPilka will do that.

Mr. CLAY. If you have reviewed your program, why didn't you supply this committee with the results of your statistical review?

Mr. HUNTER. I am not sure I understand—

Mr. CLAY. We asked for specific information about the statistics of the cases, the individuals who had been arrested, conviction rate. If you have reviewed them in your oversight capacity, why was this committee not given that information?

Mr. HUNTER. My response was in terms of the procedures. I know that you have asked for statistics before the period that they were computerized and that there has been a series of meetings and exchanges with regard to providing additional information beyond all the information provided.

Mr. DUPILKA. I believe that we have furnished the GAO with a computer down-loaded version of all our statistical information on

the narcotics program from 1989, which is the point where we automated, forward. We furnished that to them several weeks ago.

Mr. CLAY. Have you reviewed those cases?

Mr. HUNTER. Not each case personally, no, sir. There are thousands.

Mr. CLAY. Then what do you view as your responsibility in regard to these obnoxious, outrageous events that took place during these drug stings? You don't think that you have a responsibility to go back and review and if possible make some recommendations that can make these people whole again?

Mr. HUNTER. I certainly do, and I have spent a significant amount of time trying to assure that this doesn't happen in the future and to work with the victims as I become aware of it. I have spent a significant amount of time with regard to the Cleveland victims. I have recommended that the three individuals identified at the hearing at West Palm Beach who lost their MSPB hearing, that their situation be considered by postal management, and today I have indicated to you that we will look into the situations that have been raised here.

Mr. CLAY. You mentioned Cleveland. Have your inspectors been keeping you abreast of all these tragic incidents? Because when this committee asked about the narcotic enforcement operations in Cleveland, we were told that it was an aberration. You did not tell us that the same kind of thing had happened in West Palm Beach, in Los Angeles, Indianapolis, Minneapolis, Boston, and Toledo.

Were you withholding information from this committee?

Mr. HUNTER. I was not withholding information from you. As you know, I was not happy that I first learned of the situation in Cleveland by reading it in the Cleveland Plain Dealer. Upon learning that, I took swift action to initiate an internal investigation.

I wasn't happy with the initial results of that. I am not happy with the information that has come to light. I am working hard to react to adverse information when I learn of it to correct the situation.

Mr. CLAY. In your statement just a second ago, you said that racial bias would not be tolerated in the Postal Inspection Service. Nationwide, almost one-half of the 1,731 controlled substances cases against postal employees involve black males, who only represent 13 percent of the postal work force.

I might say to you, in this area, that better than 50 percent of the convictions nationally for narcotic abuse are white folk, not the black folks that you read about all the time. Why is it that 50 percent of all of these people who represent only 13 percent of the work force are black males if you don't tolerate any kind of racial bias?

Are you saying to me that they were not targeted? In some cities, 100 percent of the targeted people were black males. In New Orleans, for example, 100 percent. In San Francisco—let's take some others here—in Chicago, of 238 targeted people, 78 percent of them were black males. In Washington, DC, of 119 targeted people, 76 percent of them were black males, and this goes all through—Pittsburgh, St. Louis—70 percent of those targeted were black males.

If you don't tolerate any racial bias, tell me what is happening with these targeted individuals? Does race have anything to do with the target?

Mr. HUNTER. I share your concern. Obviously, it does. Obviously, race was an element in Cleveland. And one of the questions I asked early on was, if we have five or six informants who are black and the victims are black, did we have a proportionate effort focused upon whites; because the use of narcotics does not discriminate by race.

The answer, as you know, is "no". That is not acceptable. That is one of the things that I want Recie Springfield to get to the bottom of and develop a solution for us, not just on employees narcotics investigations, but all internal investigations. And I hope for him to not only be able to use the data that we have asked to be gathered and analyzed externally, but the data that you have asked to be gathered by GAO.

Mr. CLAY. How much has your narcotics program cost the Postal Service over the last 5 years?

Mr. HUNTER. I don't have that figure. I am not sure whether Jeff does or not. I can tell you the percent of manpower, work hours, if you will.

Mr. CLAY. What is the percent of manpower?

Mr. HUNTER. Currently, this year, through the first half of the year, it is 2.4 percent of our work hours.

Mr. CLAY. But money-wise, you don't know?

Mr. DUPILKA. We have a figure for fiscal year 1993 which involves all of our controlled substance purchases and our informant distributions for not only internal crimes, narcotics cases, but other cases like mail fraud and mail theft. I can give you that figure if you would like it, sir.

Mr. CLAY. It seems to me that whatever you spent has been wasted money. In 5 years, you have a total of 1,731 cases, that is an average of 300 cases a year. You have over 700,000 employees. To me, there doesn't seem to be a pervasive problem with narcotics, as you have said on more than one occasion, within the Postal Service. 1,731 cases in a year where 700,000 people are involved is no evidence that you ought to be showing great concern about entrapping people in this area of narcotics.

Mr. Sawyer.

Mr. SAWYER. Thank you, Mr. Chairman. Let me just shift gears for a second.

Last year the Postal Service contracted with a private firm to conduct background checks for new hires. I have heard that these have taken an inordinate amount of time, and that the hiring process has been held up.

Can you comment on that process and about those delays? Do you have any sense of that?

Mr. HUNTER. I have heard the same thing. I don't have any statistics or any firsthand knowledge. That process was a response by the Postmaster General and his key officers to our findings as we investigated the problem of violence in the workplace, that the proper preemployment screening steps were not being taken in a number of instances.

Some offices were not doing police records checks, prior employer checks or proper review of military records. So it was an effort to contract it out to assure that it was done properly.

It is difficult with the peaks and valleys in the hiring process for the postal offices to meet those demands on a site-by-site basis. But I am sorry, I don't have firsthand knowledge as to the difficulties, other than I have heard complaints of delays by the contractor during the start-up period.

Mr. SAWYER. Thank you. Among the kinds of stories that we have heard have been those that have surrounded threats of violence against postal employees. Have you been able to make any progress with regard to the whole range of threats that postal employees face? Particularly, with regard to retaliation for circumstances like we have seen today, or in the more generalized case of processing and delivering the mail. What kind of risks are employees under and what kind of protection do they receive?

Mr. HUNTER. Yes. As you are aware from prior testimony, we have made a significant number of changes. In fact, from 1992, we have increased the hours that we devote to the problem by 152 percent. It is now over 6 percent of our work hours, and last fiscal year, we investigated over 6,000 cases. As the chairman pointed out, a lot of those threats are external. In fact, there are more threats and acts of violence on employees by nonemployees. It is our top priority, any threat or injury to an employee or a customer.

An example of a customer injury or a threat would be a mail bomb. We have automated our complaint system as was recommended by this committee so that all investigative attention goes into one common database, as was recommended. We have also taken all the knowledge from the prior incidents that we studied and made that into a required element of the investigation, that all those things be considered.

We have a 24-hour hotline. The calls to that hotline in 1992 reporting threats or assaults was 1,780; in 1993, it was 593. The Inspection Service is just a part of the solution, but the aggressive attention that Mr. Runyan and other managers have given have included things such as the addition of the 85 psychologists, because a lot of the solutions are not law enforcement, they are people that need assistance emotionally or labor management problems that need attention.

The Joint Committee on Violence in the Work Place has trained a team, the symposium that was held, the doctors that have been retained by the Postmaster General to review the correspondence and to help assess the potential for violence—so there is a much fuller, more robust effort at reducing the threat of violence in the workplace than there was previously.

Mr. SAWYER. Mr. Chairman, if I could be permitted an observation. One of the things that you mentioned was that at least the popularly understood role of the Postal Inspection Service has been aimed fundamentally at ensuring the integrity of the mails and the work of the Postal Service overall.

If I could be permitted an observation, your confidence, your clear grip on the difficulties and the solutions with regard to those kinds of things seems to be strong. It is when we get into these

other areas that the discomfort seems to apply. I hope that we can learn from this.

The one final point I want to ask about was the reports I have heard that at least a couple of inspectors who participated in the Cleveland sting operation targeted employees on the basis of their involvement in the Employee Assistance Program. It seems to me that EAPs really represent the first line of defense in dealing with internal substance abuse and other kinds of particular problems that employees have. It really runs the risk of deeply undermining the one strong tool that we have in dealing with troubled employees if those kinds of records are used.

Can you comment about whether or not inspectors actually did provide informants with lists derived from—

Mr. HUNTER. I can. I will address it generally and Andy Clemons will address it in more detail because he was a key element in the Cleveland investigation.

I appreciate your general recognition of the contribution of the Inspection Service, and of course I am not dwelling on them here because that is not the issue here, and what we are discussing here is inexcusable, but there are 2,100 people out there doing very good work in a number of other areas.

But the issue here is narcotics investigations and there are too many errors and I do not condone entrapment or the things that have happened. There are very limited conditions under which the EAP program can divulge information to the Inspection Service.

There are limited criteria under which they are expected to. One is if the individual may represent serious threat to others, and that happens on occasion, that information is shared there, we are called in and they are found to be a threat, and a law enforcement approach is appropriate. Another is if they divulge information that they are engaged in child abuse. So there are some very limited situations like that. Other than that, it is not appropriate; that is not a place to go to gather information to target employees.

I would like Andy to respond specifically with regard to the genesis of the cases in Cleveland.

Mr. CLAY. Will the gentleman yield?

Your manual, the Inspection Service Manual, directs inspectors to find potential suspects and gather information on those suspects from Employee Assistance Program counselors, true or false? It specifically directs them to gather information from these counselors. Is it true or false?

Mr. DUPILKA. Mr. Chairman, if I may answer that question. The Inspection Service Manual, as it exists, has a section which directs the inspector to employ assistance program counselors, not to identify people who are involved in the use of drugs or who are seeking treatment. The Employee Assistance Program counselors often come into possession of information concerning people who are dealing drugs in the workplace and that is the intent of that section, to get information on people who are dealing and creating victims, not to go after the people that are using.

Mr. CLAY. Thank you.

Mr. CLEMONS. As far as the Cleveland case is concerned, the information that we uncovered when we investigated that case is that 60 of the 68 people that were targeted there in Cleveland, the

initial information came from the informants themselves. Only eight of the people who were targeted, the information came from other sources and I don't believe those sources included EAP.

Mr. SAWYER. So, newspaper reports to that effect and some of those involved in the process who said that they used the EAP Program were incorrect?

Mr. CLEMMONS. No, sir; I didn't say that. What I said is, the initial tips that were received by inspectors did not come from that program. Some of the people involved were involved with EAP and they were attending that program.

Mr. SAWYER. Let me share with you a report. I will read it to you as it was offered. It wasn't a matter of sharing tips; it was a matter of sharing sources. I don't mean to browbeat this, but I am not sure that your answer is responsive to the question.

I will read it from the beginning.

The Postal Inspector who ran a botched drug sting here testified yesterday about his role in the scandal saying higher-ups were more interested in racking up statistics than in supporting thorough investigation. Tim Marshall has declined interviews since the sting blew up a year ago, but took the stand in an administration hearing to appeal the Inspection Service's decision to fire him and his colleague Daniel Kuak.

The two men supervised the undercover operation which resulted in charges against as many as 30 innocent people. The informants lied about buying drugs from postal workers so they could keep the \$250,000 they were given for drug purchases.

Kuak, who also has remained silent until now, testified yesterday that one of the ways the inspectors developed suspects for narcotics investigations was from counselors in the Employees Assistance Program. A spokesman for the Postal Service in Washington said he found that hard to believe, but in fact that was the testimony.

I am not sure that suggesting that there may have been other sources for finding suspects responds to that particular and very specific testimony.

Mr. CLEMMONS. When I reviewed the files of Mr. Kuak and Mr. Marshall, there was nothing in the file that suggested that they got any of the targeted people from the EAP rolls.

Mr. SAWYER. Except for their spoken testimony.

Mr. CLEMMONS. That is correct.

Mr. SAWYER. The point of my raising the question, and I hope the point of the concern that we have all expressed, is that while there may have been nothing in their files, and they may have been smart enough certainly to make sure that there was nothing there—that regardless of that absence of evidence in the files, this raises very real concern.

The integrity of the Employee Assistance Program and the confidence that it generates among employees is fundamental to its success. My sense is that we deal a lot better with internal substance abuse to the degree that it may exist in the Postal Service or any other workplace based on the strength of that confidence and we have had better success with that program than with any other; certainly better than with these kinds of stings.

Thank you.

The CHAIRMAN. Mr. Hastings.

Mr. HASTINGS. Thank you, Mr. Chairman.

Mr. Hunter, I am 31 years a lawyer and 13 of those years as a judge in some form or another either in State or Federal court. I only use that as a reference point to highlight what happened in

Mr. McDonald's case. A jury, a trial jury made a request to make a statement and a judge agreed that that should occur.

Just for your purposes, that is extremely unusual and it heightens the notion that something was radically wrong during the trial, and I base that on my experiences. In all of my career, I have not had a single jury—and I have been involved literally in more than a thousand trials over the course of 31 years in some form or another—and I have never heard a jury make such a request. So in that light, you need to read the testimony of the jury and the judge as you proceed in reviewing Mr. McDonald's case.

Turning from that, in the West Palm Beach testimony it came out in a hearing that was held there that Chairman Clay was gracious enough to come down and hold the hearing in West Palm, that a convicted felon was taken out of prison and put on the streets as a postal employee to investigate what appeared to be the goings-on in West Palm. This investigator, it turns out, literally entrapped innocent workers and consequently innocent people were fired.

I recognize you inherited this problem and recognize that during the course of your prepared testimony and your summarized testimony, that the only reference that was made to West Palm Beach dealt with the fact that three of the persons who had gone through the merit system and lost their jobs, that matter was being reviewed.

As you might expect, coming from that district, I am vitally concerned about it, so I want to hear from you regarding the specifics of what has taken place since the February hearing in West Palm Beach. Can you give me the specifics at this time?

Mr. HUNTER. Subsequent to the hearing?

Mr. HASTINGS. Yes, sir.

Mr. HUNTER. I have decided, and although it is not within my authority to reinstate them, I have asked that they be reviewed by senior management because of the dichotomy that you are talking about, the seeming disparate treatment by an administrative appeal process versus what the outcome could have been judicially. Of course, the U.S. attorney made the decision not to proceed on further cases after the initial case.

Mr. HASTINGS. All the more reason why the merit system should have been able to assist these people. Let me tell you, it was developed at that hearing by Chairman Clay's queries that the administrative proceeding was lacking, and that is putting it mildly. I do not wish to consume a great deal more time.

It has been since February. I am troubled by any bureaucracy that takes a substantial amount of time to correct its mistakes. I sense from you and I appreciate the fact that I believe that you are genuinely sincere about correcting those problems. As a member of this oversight committee, and I have not learned all of the jurisdiction I as a rookie member have, but I want to see something in 30 days regarding those people in West Palm Beach, please.

Mr. HUNTER. That is fair.

Mr. HASTINGS. Thank you.

[The information referred to follows:]

UNITED STATES POSTAL SERVICE,
Washington, DC, June 24, 1994.

Hon. ALCEE HASTINGS,
Committee on Post Office and Civil Service, U.S. House of Representatives, Washington, DC.

DEAR CONGRESSMAN HASTINGS:

This is in response to your correspondence of May 13, 1994, concerning narcotics investigations conducted in West Palm Beach, Florida. At your request, a committee of senior postal managers thoroughly reviewed the cases of Messrs. Anthony Fields, Charlie O'Neal, and Jose Rodriguez, which arose as the result of drug investigations in West Palm Beach, Florida.

Included in their review were the investigative files of the Inspection Service, the initial and petition review decisions of the MSPB for all three individuals, and the hearing transcript of Mr. O'Neal and Mr. Rodriguez before the MSPB. The testimony presented at the House Post Office and Civil Service Committee field hearing in West Palm Beach was also evaluated.

The review committee noted inconsistencies in testimony presented at the House Committee hearings and in information provided at the MSPB hearings, as well as at the arbitration hearings. The committee's review disclosed that the hearing officer had all of the relevant information available at the time of the proceeding. Evidence presented was weighed along with the credibility of the witnesses. The character of the informant was explored. Based upon his analysis, the hearing officer reached the conclusion that the Postal Service established by a preponderance of the evidence, that the appellants had committed the acts which led to their removal. The hearing officer's decision was later reviewed by the full Merit Systems Board and was upheld.

The House Committee on Post Office and Civil Service expressed concerns that the multi-track appeals system now available to Postal Service employees could subject similarly-charged employees to dissimilar results. The dispute-resolution procedures available to Postal Service employees have their bases in Federal statutes. Title 39, United States Code, requires the Postal Service and its unions to establish and maintain a grievance-arbitration procedure. Title 5 established the Merit Systems Protection Board for preference eligible and certain other employees to appeal adverse actions. In providing these procedures to resolve employer-employee disputes, we believe the law also created a reasonable expectation that decisions reached through these procedures would be final and binding on the parties.

The three West Palm Beach employees in question were unsuccessful in their appeals before MSPB, which upheld the Postal Service's decision to remove them. Other employees appealed through the contractual grievance procedure; they prevailed and, where appropriate, were reinstated. While each forum has arguable advantages and disadvantages, each can provide different judgments in cases arising from the same incident. Like the members of the House Committee, the Postal Service recognizes the anomaly which can result from similar appeals in different forums. However, we can take no action which would guarantee uniformity of results.

After careful consideration, the review committee is satisfied that the MSPB had sufficient information in rendering its decision. They do not believe that there is reason to disturb the findings of the MSPB. We regret that we cannot offer a more favorable resolution, although I appreciate having the opportunity to explain our position. We would be glad to meet with you and answer any other questions you may have on this matter.

Sincerely,

K.J. HUNTER.

Mr. CLAY. Mr. McCloskey.

Mr. MCCLOSKEY. Thank you, Mr. Chairman. I commend you for this hearing. In all candor, I don't know all of the aspects about the work you have done, but is it true, Mr. Hunter, that inspectors receive bonuses based on their arrests and convictions in this and other areas? If that is true, is there thought being given to whether this is good policy?

Mr. HUNTER. That was a major concern I had when I became chief inspector and I examined how the Inspection Service should be restructured and the cultural changes that need to be made. I asked employees for input and a number of inspectors complained

about what is characterized as collars for dollars. It is a common term apparently in law enforcement. I don't condone that.

I dropped the emphasis, the primary emphasis upon arrests. The cases need to be investigated in a priority sequence that is determined by the nature of the case and the severity, not how easy arrests might be to obtain. In the hearing that was held in Florida—

Mr. McCLOSKEY. Is there any thought being given to the idea that you don't have bonuses for numbers of arrests? Frankly, I am increasingly skeptical, Mr. Chairman, about Federal bonuses in general. What is the policy as far as abolishing the bonus concept from this type of work?

The most simplistic concept is so-called speeders and speed traps and what that does, arbitrary arrests and enforcement. Where are you on this, without a lot of anecdotal background?

Mr. HUNTER. That is where I was going. The retired inspector who testified at the hearing raised it and referred to the system under which that was done; the merit system. That system is abolished so the system in which inspectors established goals that included numerical goals regarding arrests and subsequently received merit increases is abolished.

Mr. McCLOSKEY. But numbers of arrests are not a factor in bonuses and so-called merit increases now?

Mr. HUNTER. They are no longer a factor. Arrests are important, but they are not a factor in terms of collars for dollars. The factor is, and I am not trying to engage in doublespeak—the factor is the significance of the case. The significance could be the harm that was done by the perpetrator, things like that. It is not the number of arrests. In fact, the number of arrests have fallen.

Mr. McCLOSKEY. This obviously merits further discussion and attention. I missed Mr. McDonald's testimony and I don't know if this was brought up previously, but is that the way you normally handle someone professionally in any aspect of law enforcement these days, the idea of gotcha, several hours of interrogation and threats, when was he advised his rights?

Mr. HUNTER. You are correct that that was covered earlier, and I said that we would review that thoroughly.

Mr. McCLOSKEY. What do you mean by reviewing that thoroughly? Mr. Chairman, this is on the record. This is an outrage. You are overdue now, sir, with all due respect. Have you or have you not put an order out that all instances like this presently and in the future will not be dealt with that way? I mean, what kind of professional outfit do you have?

Mr. HUNTER. I first learned of Mr. McDonald's testimony this morning and made a decision this morning that his situation will be looked into thoroughly, and I am not trying to hide behind anything. I don't condone the actions as characterized—

Mr. McCLOSKEY. Do you have standard procedures? Are any of these people going to be reprimanded or punished in any way? The FBI has standard procedures as far as reading people their rights and a legal—a due process standard. Do you know if this is a rare case or is this the way that your operatives operate?

Mr. HUNTER. I do not know yet what will be done in the Los Angeles case. When I have the results of the investigation, which will

be done promptly, then I will know. In the Cleveland case, it is obvious that I don't condone that kind of behavior.

Mr. MCCLOSKEY. I understand you are not condoning that behavior. I believe you. But, again, what is the status of your directives, your training, your standards? Do you know?

Mr. HUNTER. The status is outlined in some detail in my statement in terms of the changes made in the requirements for internal narcotics investigations and the training. The situations that we are dealing with here also need to be dealt with. They predate those changes. Those changes are made in an effort to avoid these situations, which I absolutely do not condone, and once I get the information on the Los Angeles situation, appropriate action will be taken as it was in Cleveland in terms of discipline.

Mr. MCCLOSKEY. I think you see what I am getting at. We could go on and on, but particularly as to what we all learn in first year law school and everybody knows from TV, Miranda warnings, right to due process, strictures against arbitrary incarceration—this is bizarre.

Mr. DUPILKA. If I might answer on the criminal portion of that, we have instructions that inspectors are to Mirandize people who are in custody. That is in compliance with all the Federal standards, the Federal Rules of Criminal Procedure.

As far as representation during hearings—

Mr. MCCLOSKEY. What happened here, then; do you know?

Mr. DUPILKA. Mr. McDonald acknowledged that he was advised of his constitutional rights against self-incrimination upon the beginning of the interrogation.

Mr. MCCLOSKEY. So he was voluntarily—in this back room for x number of hours getting in essence psychologically worked over—

Mr. CLAY. Would the gentleman yield?

Mr. MCCLOSKEY. Of course I yield to the distinguished chairman.

Mr. CLAY. I think Mr. McDonald testified that he was handcuffed and taken up to a room for interrogation. When does custody take place, when they handcuff him, is he in custody?

Mr. DUPILKA. That is correct.

Mr. CLAY. Then they did not read him his Miranda rights.

Mr. DUPILKA. If I may, sir, the prohibition is that you cannot ask questions until you advise them of their rights, and at the point where he was taken into custody at his job site, I don't believe there was any questioning according to Mr. McDonald's testimony. The questioning began when he was seated in the office of the inspectors.

Mr. CLAY. According to his testimony, he went to his locker first and you searched his locker, the inspector searched his locker while he was handcuffed. Tell me if that is a violation of the Miranda rules?

Mr. DUPILKA. I believe the Miranda rules deal with self-incrimination by the defendant and the locker in the Postal Service is not part of that.

Mr. CLAY. Self-incrimination deals with his right to have a lawyer, doesn't it?

Mr. DUPILKA. That is correct, before he answers any questions.

Mr. MCCLOSKEY. So did he refuse a lawyer?

Mr. DUPILKA. I believe that based on his testimony, he didn't ask for representation at the time.

Mr. MCCLOSKEY. We have perhaps discussed this enough. I understand one informant got \$108,000 in Cleveland, Mr. Willy Kemp—how long a period did it take to rack up \$108,000?

Mr. CLEMMONS. I don't believe that figure. It is pretty close, but it took him from October 1991, I believe, until January 1993.

Mr. CLAY. Will the gentleman yield? Is this the same individual that you sent on the honeymoon down to Mexico and paid for, and according to his testimony, paid for his wedding, a party, and then he had enough money left over to go on a honeymoon in Mexico somewhere; is this the same individual?

Mr. CLEMMONS. I don't believe the Inspection Service personally sent him to Mexico.

Mr. CLAY. They just gave him the money?

Mr. CLEMMONS. He received the money, yes.

Mr. MCCLOSKEY. Besides \$108,000, I guess he was on payroll too, probably as far as the formal Postal Service payroll?

Mr. CLEMMONS. No, sir, he was not on the roll. He only worked as a casual employee for a couple of months and he was fired from the Postal Service. This occurred in Toledo.

Mr. MCCLOSKEY. His work wasn't done as a Postal Service employee, then?

Mr. CLEMMONS. That is correct.

Mr. MCCLOSKEY. Are there cases where they are getting cash from you and they are also on the postal clock?

Mr. CLEMMONS. Yes, sir.

Mr. MCCLOSKEY. So while they are doing this, they are building up a Federal pension—that is a hell of a deal if you can get it.

Mr. CLEMMONS. I need to make a clarification, though. The monies that you were talking about, all that money was not informant money. What happened, Mr. Kemp embezzled the controlled substance funds.

Mr. MCCLOSKEY. This was someone you placed your trust in in order to nail other people?

Mr. CLEMMONS. He is being prosecuted, sir.

Mr. MCCLOSKEY. I thank the distinguished chairman.

Mr. CLAY. Miss Collins, and then we are going to break. We have to vote.

Miss Collins.

Miss COLLINS. Thank you, Mr. Chairman. You and I have worked together a lot on the mail fraud and violence in the workplace and now I have some very specific questions I want to ask you.

I want to ask you what happened to Mr. Salinas?

Mr. HUNTER. That is one of the things that we are going to find out in the investigation.

Miss COLLINS. What happened to Mr. Chavez?

Mr. HUNTER. Well, again, through the investigation, we are going to determine what should be done.

Miss COLLINS. Is he still on the payroll?

Mr. HUNTER. The inspector is still working for the Postal Service. The informant is not.

Miss COLLINS. Is the informant in jail?

Mr. HUNTER. I don't know.

Miss COLLINS. What happened to Mr. Frye?

Mr. HUNTER. He is no longer with the Postal Service.

Miss COLLINS. What happened to him? I understand that he accosted Ms. de la Forest and the Postal Service asked them not to prosecute him before he was to testify.

What happened to him? Where is he?

Mr. HUNTER. I don't know where he is today.

Miss COLLINS. What are you doing for Mr. McDonald? Is he back working for the Post Office?

Mr. HUNTER. No; he is not.

Miss COLLINS. Has he received his back pay?

Mr. HUNTER. He has not.

Miss COLLINS. Has he received a public apology? He was arrested with television cameras. He was afraid to leave his home for three months, that people would recognize him. Those are the kinds of things law abiding people are devastated by when something like this happens.

What public restitution has been made to Mr. McDonald?

Mr. HUNTER. None. That is one of the things we have agreed to look at this morning, because this morning was the first exposure to his testimony. I do not condone the publicizing of employee situations like that. This is one of the changes I have made. In the past, it was regarded as a preventive measure. I don't think that these kinds of things, be it for narcotics or theft or anything, should be publicized. It reflects poorly on the individual and the service.

Miss COLLINS. Inspector Hunter, in the testimonies that I have read, in two of them, they had television, the media exposure and the people were publicly humiliated. In Mr. McDonald's case, a judge reprimanded the Postal Service and the jury to speak because they were horrified about what happened, and then in a kangaroo court, the Postal Service reconvicted him.

I want to know what is going to happen? Are we going to have the Postmaster General here who can tell us what is going to happen?

Mr. Chairman, with all the power of this committee, I think we need to be told what is going to happen to rectify these people not only monetarily, but you have destroyed their reputations. He is working at a job that he can barely get by and if this had not happened to him, he would have 17 years seniority. I want to know what is going to happen.

I think the Chairman should call another hearing in 2 weeks or something. The President solves international crises faster than this, and I want to see what will be rectified and how it will be rectified.

I don't think that we need to be collegial in this, Mr. Chairman. You know how everybody is honorable this and honorable that—I think the hammer needs to come down and needs to come down hard. I want to know what happened to the convicted felons who took American taxpayer money and put it in their pockets and then falsely accused innocent law abiding people and, through the television cameras and everything, destroyed their lives. I want to know what is going to happen.

I want to know if this will ever—are we going to have to pass a law to tell them to get back to the business of inspecting postal fraud and postal occurrences and not just set up African-American males—what is going to happen?

Mr. CLAY. I think we are going to reach some kind of resolution, but we have 6 minutes to vote.

Miss COLLINS. Will we call another hearing, Mr. Chairman?

Mr. CLAY. I think we might. We will discuss it afterwards. We might have the Postmaster General in.

Ms. NORTON. Mr. Chairman, if I could ask the chairman if we have another hearing, I have continuing concerns about collars for dollars, even given that it is now only for significant arrests and convictions.

I would like, Mr. Chairman, if you could, to have some advice and counsel from the Justice Department to know whether the FBI, whether police departments, who have never heard of this before—it is one thing to use goals—

Mr. CLAY. Can you come back in 15 minutes? We are going to break for 15 minutes.

[Recess.]

Mr. CLAY. The committee will come to order.

Ms. Norton.

Ms. NORTON. Thank you very much, Mr. Chairman.

Mr. Hunter, I want to first make it clear that especially as a Member who represents the District of Columbia, the activities of the Postal Service in going after the bad guys is, of course, what society has encouraged you to do and here where we are drowning in drugs and where the use of the mails, even private mail services, has become an art form for these drug thugs, make no mistake, the Members here overwhelmingly support ferreting out these people.

As you can see, we bring a strong sense of due process and belief that the great genius of our country is that somehow we collar them without collaring ourselves. I want to first ask about this collars for dollars, and I appreciate that you have reined it in.

I believe that goals for work which hold people accountable are very important if those goals are based on actual experience. In the Federal system, we have had very uneven success with bonuses. You will have your employee organizations very agitated about them. It is very hard to award bonuses fairly, and yet the notion of rewarding people monetarily for excellent work is a goal and a practice that should not be limited to the private sector. It is much harder to do in a civil service system where everybody gets compared very strictly to everybody else and we still don't do it right in the civil service system.

I would like more of an explanation of collars for dollars because, it seems to me, if there was a place where I was going to draw the line on monetary incentives for work produced, it would probably be at the point where in order to get one's bonus, one had to deprive somebody of a fundamental right—at that point, it seems to me we may have precisely competing goals of society, and it is there that I would be most careful.

My first question is: Do you know of any other law enforcement agency that uses monetary incentives as you have used them for arrests or for investigative work or for—of any kind?

Mr. DUPILKA. If I may answer that, the Postal Service was unique in the Federal community in that we had a merit program where we had potential for people receiving merit bonuses based on performance once they had reached the top of their pay scale. So in that regard, we are unlike the FBI or the Secret Service. I am aware that there are monetary awards given to agents in other agencies for exceptional performance.

Ms. NORTON. You are unlike the FBI and police departments of this country because, again—

Mr. DUPILKA. Under the GS system, the steps in grade depend on successful performance and people receive monetary increases in their salary based on that. In the Postal Service, we move along through a merit system, and once a postal employee is at the top of their grade, they receive a percentage of a merit bonus based upon their performance for the year, and that was based upon objective setting processes.

Ms. NORTON. What does that have to do with how we get to collars for dollars?

Mr. DUPILKA. In the objective-setting process, I believe in the past, the practice was that there are people trying to achieve certain numbers and goals based on arrest statistics that weren't based as much as we do now on solving our problems.

Mr. HUNTER. I think that is inappropriate for two reasons. First, is what you talked about. It can sure risk the rights of individuals by causing people to be overzealous and not conduct themselves properly. Second, it can also cause them to direct their work in an area that should not be a top priority, in an area where perhaps even if they were legitimate, arrests would be easier, and that is wrong.

One of the fundamental changes we are making is to adopt common goals with the customers, if you will, be they postal employees or externally that emphasize prevention. An example is theft of credit cards from the mail. Instead of measuring success on arrests—arrests happen when it is too late; something has been stolen. We are now placing emphasis on prevention. The common goal is to reduce the losses attributable to credit cards that were stolen from the mail.

Ms. NORTON. By doing what?

Mr. HUNTER. By a number of preventive efforts. For example, we formed a group with the airline industry, the credit card companies, the plastic manufacturers, banks, et cetera, saying what can we do to prevent it. An example is an idea of an inspector that resulted in—now when you receive a credit card, you often have to dial a 1-800 number before you can use it. It is called card activation, and you have to share personal information like your mother's maiden name so if a card were stolen in transit, it would not be good.

Ms. NORTON. But that has nothing to do with collars for dollars.

Mr. HUNTER. But it does. The point being, we are no longer measuring success on arrests, period, in the agency or by the individual. So the kind of things that people could get an exceptional award could be prevention, it could be that things didn't happen because of the effort that they put in, which I think is more appropriate.

Ms. NORTON. Can you get an award for any kind of arrest—say it is a very significant bust. Can you get an award for that under present procedures?

Mr. HUNTER. It would not be an award for the arrest. It would be an award for successful investigation—

Ms. NORTON. Mr. McDonald got off in court. Say Mr. McDonald was a major trafficker. The fact that he ultimately was exonerated would mean that there was no dollar for that collar; is that what you are telling me under the new system?

I am trying to find out under what circumstances a person can get a payment because of either an arrest and/or a conviction for something he has informed upon.

Mr. HUNTER. They do not get bonuses now based upon numbers of arrests.

Ms. NORTON. Let me zero you in on my concern. I heard that in the earlier testimony. I thought you said that dollars now were tied to the significance of the matter.

Mr. HUNTER. Of their contribution.

Ms. NORTON. The significance of the matter could be a matter which ended in conviction?

Mr. HUNTER. It sure could.

Ms. NORTON. My concern about that is, we may, and an unintentional effect there would be to direct people toward stings or false accusations that are even worse than they are now because, since the significance of the bust is what matters, your information and your direction has to be toward really framing somebody big or framing them with a big lie; because you are not going to get paid for it unless the matter is significant. In other words, I am raising a question about the use of collars for dollars at all.

Mr. HUNTER. I do not condone that at all. If you do what you characterized in the example, you get fired. That is what I think—

Ms. NORTON. You are telling me you cannot be paid then for an arrest and a conviction, no matter what happens?

Mr. HUNTER. It is not for that. It is for what you did—

Ms. NORTON. What you did was to inform.

Mr. HUNTER. For example, a case like McDonald's would not warrant a bonus.

Ms. NORTON. That is why my hypothetical had him as a big trafficker, they framed him saying he is a big one. In that case, what would happen to the informer? He is somebody that handles millions of dollars, you are informed, a year. What would be the result for the informer?

Mr. HUNTER. I expect the changes in procedures we have put in place would catch something like that if it is entirely a fraud.

Ms. NORTON. No, it is not a fraud; it is a frame.

Mr. HUNTER. If it is a frame, then the new procedures should catch that.

Ms. NORTON. Does the FBI, does any Police Department that you know of pay for arrests and convictions of any size and dimension? Do you know of any precedent or any practice—

Mr. HUNTER. I do not know. I know they all place emphasis on arrests, but—

Mr. CLAY. Would the gentlelady yield? Do you know of any Police Department or FBI or investigative agencies that pay for tips, if they get a tip? Our committee has learned that inspectors, if a department store detective calls and says we have a guy, we stopped a guy with phony credit cards—you mentioned credit cards—they give the guy who places the call a \$25 incentive to call again I guess, and the same thing with check cashing facilities—if they call and say we think this guy stole a check out of the mail, is it true that they give them \$25 when they get there?

Mr. DUPILKA. I don't know the exact amounts that are paid to any confidential source as you have characterized it, but I know that other enforcement agencies do pay people that provide information for that information.

Mr. CLAY. An automatic amount of money just for placing a call?

Mr. DUPILKA. I couldn't say that that occurs. I don't know how they operate in those areas, but I know they pay sources for information.

Ms. NORTON. There are potential uses in criminal law enforcement for payments. ATF, for example, a citizen may call in, for example, and get a reward. That is encouraging citizens who are often reluctant to come forward because they fear for their safety. There are appropriate ways to do it and there is a lot of experience in what is appropriate and what is not appropriate, and our law enforcement agencies, including our police departments who are overwhelmed, generally do it very well.

My concern is that the Postal Service conform to accepted professional practice in the law enforcement profession, and I would like to request that you, Mr. Hunter, and others whom you deem appropriate have appropriate meetings with especially the FBI and the ATF.

I would also suggest the park police. I know these law enforcement agencies to be professional and to not be often accused in their work, with precisely the kinds of people you work with, of going beyond professionally accepted practice. That is one thing I would like you to do.

I want to simply say for the record that to the extent that you are using money in a way that is unique to you and not used by other law enforcement agencies, I would, and I ask you to exercise a large presumption against that and in favor of getting rid of that. You have to restore your reputation, and one way to do it quickly would be to say we are using the same procedures and practices that are used by the FBI or the ATF, and I ask you to have those meetings.

Mr. Chairman, if I could ask one or two more questions. I wonder, for example, in the Cleveland sting operation, what criteria the Inspection Service used in deciding which postal employees it would target for investigation?

Mr. CLEMMONS. I will answer that. You want to know what procedure they used. The two inspectors involved or what procedures normally we use?

Ms. NORTON. Both.

Mr. CLEMMONS. In the Cleveland investigation, I don't believe they had any tips other than the eight that I mentioned earlier. They placed CIs in those facilities and attempted to gather intel-

ligence from these CIs and that is how that operation started. Normally what happens or the correct procedure, the way it should be done, is that we will receive tips from postal supervisors, law enforcement agencies in the community, postal employees, et cetera. As a result of that, we will take that information and try to place an informant in that facility.

Ms. NORTON. Are they paid for those tips?

Mr. CLEMMONS. No.

Ms. NORTON. You do not pay for tips from employees from within the organization who pass on tips?

Mr. CLEMMONS. We do not.

Ms. NORTON. Who in the chain of command is charged with approving investigations after tips are received?

Mr. CLEMMONS. Normally, a team leader would go to the inspector-in-charge and get approval.

Ms. NORTON. Normally that would happen—that is how it always happens?

Mr. CLEMMONS. Yes.

Ms. NORTON. So supervision is deeply implicated in these practices.

Mr. DUPILKA. We have revised our procedures to strengthen that more. We now have mandatory approval by the team leader of any placement of an informant and that has to be approved by the inspector-in-charge of the operation. It is not optional at all. It is not a normal procedure that can be violated. It is a regulation that has to happen under our revised rules.

Mrs. NORTON. And those rules have been in effect since when?

Mr. DUPILKA. We revised them as a result of the incident that we investigated in Cleveland.

Ms. NORTON. Must the employees exhibit behavior over any period of time in order to be targeted or does the Inspection Service simply place an agent or an informant in the workplace as kind of bait to see which employees will bite?

Mr. DUPILKA. Our normal procedure was to put all of our intelligence sources together, not just tips, but information we have from police departments, criminal history checks, management information, checking with supervisors and, on some occasions, we have the responsibility to arrest employees in facilities who are responsible for other misconduct.

We use all that information to attempt to identify individuals in facilities who may be dealing. Once we identify those types of individuals, we place a source into the facility and their instructions are not to initiate conversations concerning narcotics but to make associations with those people in an effort to determine if they are offering up narcotics themselves. That is our procedure.

Ms. NORTON. I would like you to clarify something for me. Is the Postal Service in all instances requiring that wrongfully discharged employees seeking reemployment go before the MSPB first?

Mr. DUPILKA. Employees that are discharged as a result of investigations, if they are craft employees, have two options. They can go through the grievance process which results in an arbitration, and if they are veterans, they can go to the Merit System Protection Board. That is the option of the employee.

Ms. NORTON. This is after being vindicated by a court. Then the employee may do either of those two, take either of those two steps?

Mr. DUPILKA. The processes are generally parallel. The criminal proceedings will be proceeding along on one track and then the administrative proceeding proceeds along at the same time. The time at which events are finalized depends on the court where they are in and the grievance process as it moves along. They are independent processes.

Many times the court process will finish beforehand or in some cases the prosecutor will offer the defendant an opportunity to not be prosecuted based on the outcome of the administrative proceeding. It depends on the attitude of the local prosecutor. In many cases, that is the U.S. Attorney.

Ms. NORTON. Under law, must there be some administrative proceeding before you can reinstate an employee who has been wrongfully discharged?

Mr. DUPILKA. It is not a legal requirement as far as grievance and arbitration proceedings go. The ability to reinstate a postal employee is something that is a subject of collective bargaining for the craft employees and that is up to the discretion of the deciding official. That could be settled at any time up to and including the hearing.

Ms. NORTON. Can you cite me any instance where, on your own motion, you have decided to reinstate an employee who has been wrongfully discharged because of these sting instances?

Mr. DUPILKA. Well, the Inspection Service doesn't—we are only witnesses in those proceedings. It is management—

Ms. NORTON. I am talking about the Postal Service.

Mr. DUPILKA. I am not familiar with any of those cases. I couldn't cite you an exact example, no.

Ms. NORTON. I ask that because it does seem to me that when you hear a story like Mr. McDonald's, which I understand you are going to take under advisement, getting the credibility of the Postal Service by its employees, the notion it would move on its own motion without being whipped into it, would, it seems to me, send a message there is inherent fairness in the way you independently regard what your responsibilities are.

I believe you are courting a class action and I don't believe you are protected from a class action lawsuit by either the MSPB finding and certainly not by the court findings. I am talking about a class action by people who have been found in courts of law to be wrongfully discharged and still have not been put in by the MSPB, and I am going to ask the chairman to check on the MSPB because the notion that they are not a check on this, I think, means we ought to ask the MSPB questions quite apart from you.

I believe that if one could show a pattern and practice of using procedures outside normal professional law enforcement procedures and not reinstating or systematically not reinstating these people, that you could be up a creek.

Mr. DUPILKA. I believe you are correct. I think earlier you cited that there are two standards of proof in those proceedings and we shouldn't be presenting cases that don't meet our internal standards.

Ms. NORTON. Here I am going to use your sting procedures.

Mr. CLAY. Would you yield?

Let me tell you what happened, a case that Mr. Hastings is so concerned about, and he asked you to do something within 30 days about it. Here was an individual, a highly decorated war veteran, won the Bronze Star, had a Purple Heart, had a perfect record with the Postal Service. He was advised by his union representative to go to the Merit System Protection Board, but then he was counteradvised to wait until after the court proceedings.

He asked for a postponement of the MSPB and the Postal Service objected to the postponement. They found him guilty. Subsequently, the courts found him innocent. What happened at the MSPB hearing was that he had a witness that would testify for him. The Postal Service would not let the witness off. They worked him past his normal hours of work. They worked him several hours longer so he would miss the hearing.

You can't tell me that something should not be done to rectify and to make this person whole without going through a whole lot of bureaucratic red tape. If the MSPB went to that length, and the Postal Service, of denying this man a proper hearing by keeping his witness, made him work overtime so that he couldn't show up for the hearing, I don't think we need to go through a lot of red tape to put that person back to work, and I think that is what you are saying.

Ms. NORTON. It absolutely is, and I think you are really on the edge now, and you are playing with the taxpayers' money, because if you ever were to get such a suit, it wouldn't be a cheap one.

I have one more question. You indicated changes and we are pleased to hear that changes have been made. Are there written procedures and guidelines at the Inspection Service now regarding entrapment and procedures for pursuing these and similar matters?

Mr. DUPILKA. We have always had written instructions concerning entrapment. We strengthened the responsibility for people overseeing those investigations to ensure that is not happening.

Ms. NORTON. Do you have written guidelines on how to conduct these matters in these stings?

Mr. DUPILKA. We do. In fact, we furnished the committee a copy of those instructions along with a couple of other agencies including the drug enforcement administration for their advice and to make sure they are complete.

Ms. NORTON. Thank you, Mr. Chairman.

Mr. CLAY. Mr. Bishop.

Mr. BISHOP. I have concerns that relate to the remedial steps that are taken after someone has been wrongfully discharged as evidenced by being cleared in the criminal proceeding and then they come again in the administrative proceedings and, because of the difference in the standard of proof beyond a reasonable doubt in the criminal proceedings and for purposes of review, the administrative process, any evidence is a standard of review in administrative proceedings, the employee still gets the shaft.

I am concerned about having within your internal affairs division some regulations promulgated that would make an employee whole. When you have this difference in standards of proof, it lends

itself to what I have seen many times, the collusion between the administrative law judge and the agency, and nine times out of ten, the administrative law judge upholds the actions of the agency, in which case there is a terrible burden on the poor employee to try to overturn that ruling, particularly with any evident standard of review for overturning it in administrative proceedings.

It seems to me that when an employee is subjected to criminal proceedings, all the unfortunate consequences that result from that, that there ought to be something in place to make that employee whole. Even if the employee is not given the job back, there ought to be some monetary contribution that is made or remedial steps that are taken so that—restitution, I suppose, is a closer word—to really make the employee whole, and that bothers me.

I would like to see coming out of internal affairs, particularly since you wear so many hats there—you assist the other law enforcement agencies in dealing with crimes committed through the mails, particularly interdiction of drugs sent through the mail, but you also investigate yourselves. And with that kind of self-investigation, it lends itself to abuse, and it seems to me that the employee in this instance needs some kind of mechanism to be made whole.

I would like to see some proposals for regulations to ameliorate this situation for the employee who has to suffer this disgrace when they are cleared in court, never can make their reputation whole again.

Can you offer me any suggestions on that?

Mr. DUPILKA. In the discussion you are having, I think that we have a shared responsibility there with postal management who are responsible for the disciplinary process, and when we furnish them investigative material, you are right; that should withstand any standards of proof, whether it is the highest standard: beyond a reasonable doubt, or a preponderance of evidence like we have in administrative cases.

We are hoping by the reforms that we have made to do our part to make sure that employees are not wrongfully accused of anything. Your concern about those cases where that may happen, management has to work through that process—

Mr. BISHOP. Let me interrupt just to make sure that I am not mistaken. Normally, the administrative law judge will judge it by a preponderance of the evidence, but if that decision is to be reviewed by a higher level, then it is the any evidence rule, is it not?

Mr. DUPILKA. I believe it remains preponderance of the evidence for any of those proceedings in an administrative. There is an alternate level of review in those cases also. The employee has ability to go to the full board and proceed in Federal court on those things.

Mr. HUNTER. The point is well taken. It troubles me that someone, if the offense is the same offense that they are punished for in the administrative process and exonerated in the judicial process, that bothers me. That doesn't seem fair, as we have heard today in the Los Angeles case. Sometimes they are not the same offense, but where they are, that does not seem to be rational.

Mr. BISHOP. I have seen it happen as a practicing attorney of some 22 years where the management officials, unsuccessful in being able to root out an employee that they wanted to get rid of

and they wanted to do it in the worst possible way by putting that employee in jail, when they are unsuccessful at that, they still pull out their trump card of administrative dismissal and, in that instance, the employee almost has no recourse.

Mr. CLAY. Has the gentleman concluded? I thank the gentleman.

Without objection, at this point in the record, we will enter a summary of the committee's investigation on Postal Inspection Service narcotic enforcement operations.

[The information referred to follows:]

SUMMARY OF COMMITTEE'S INVESTIGATION OF POSTAL INSPECTION SERVICE NARCOTIC ENFORCEMENT OPERATIONS

In January, 1993, the Committee learned that innocent postal workers were victims in a narcotic enforcement operation conducted by the Internal Crimes Narcotics (ICN) division of the Postal Inspection Service in Cleveland, Ohio. These employees were entrapped by convicted felons employed by Postal Inspectors as confidential informants. These employees were falsely arrested for drug trafficking, handcuffed, incarcerated and fired from their jobs. Some were even falsely convicted. Upon learning of these circumstances, the Committee immediately requested a briefing from the Inspection Service and requested a copy of the Inspection Service's investigative memorandum on the drug enforcement operation.

The Inspection Service response failed to provide the Committee complete and accurate information. In fact, the Committee learned from press reports that the same Inspectors using the same paid informants had conducted a similar drug enforcement operation in Toledo, Ohio. Fortunately, postal employees in Toledo were spared the suffering of their Cleveland colleagues because of the scrutiny of a local prosecutor in Toledo who refused to prosecute those cases.

After the Committee learned that, despite Inspection Service assurances to the contrary, the Cleveland operation was not an isolated incident run by two renegade Inspectors, the scope of the Committee's inquiry expanded. Although the Committee did not conduct a systematic investigation of Inspection Service narcotic enforcement operations, it uncovered similar problems with operations in West Palm Beach, Los Angeles, Minneapolis, Toledo, Indianapolis and Boston where postal employees also were falsely arrested for narcotics trafficking and terminated by the Postal Service. Each of these narcotic enforcement operations involved convicted felons employed by the Inspector Service as confidential informants. The Committee conducted field hearings in Cleveland and West Palm Beach to obtain first-hand information about the Inspection Service narcotics trafficking stings.

The Committee findings are:

In Cleveland

19 postal employees and one private citizen were arrested for narcotics trafficking as a result of a narcotic enforcement operation conducted by the Postal Inspection Service. The Inspection Service hired convicted felons as confidential informants and placed them on the workroom floor to ferret out postal employees who were narcotic traffickers.

The confidential informants concocted a scheme to defraud the Postal Service and implicate innocent postal employees. The informants hired imposters to pose as postal employees, obtained "buy money" from Postal Inspectors, purchased "drugs" from the imposter, turned over the "drugs", which in reality were baking soda with some cocaine, to the Inspectors, implicated postal employees as the sellers and then recovered the drug "buy money" from the imposters.

The Inspectors did not control the informants. The informants arranged to purchase "drugs" from the impostors in locations where the Inspectors were unable to view the transaction. Thus, the Inspectors never saw any transaction.

The victims in Cleveland included a barber, Art McKoy, who did not work for the Postal Service and was not alleged to have sold drugs on Postal property. Another victim, Willie Moore, was misidentified by two informants prior to his arrest but was subsequently convicted.

The Inspection Service ignored several warning signs which should have raised questions about the Cleveland enforcement operation. The Cleveland "drug" samples which were sent to the Inspection Service lab were the lowest quality (most below 25% cocaine and some 100% baking soda) in the nation. Allegedly, the same postal employee sold baking soda as cocaine at inflated prices to the same informant numerous times. No one asked why a drug purchaser would continue to buy baking

soda from a drug dealer. Inspectors knew that one of the Cleveland informants was using drugs during the operation. In fact, the informant was arrested by Cleveland police in a cocaine bust during the operation. Certain postal employees provided iron-clad alibis for times when drug transactions allegedly occurred. Despite these "red flags" and the significant amount of funds used, in excess of \$250,000, to purchase drugs, neither Inspector nor their supervisors questioned or stopped the prosecution of these postal employees.

Only after the intervention of the Committee did the Postal Service rehire the victims of the Cleveland sting. The Postal Service was very slow in providing back pay for these employees.

The Cleveland victims suffered loss of credit and reputation. Some victim's children quit college. Some lost their spouses and their houses. One victim attempted suicide only to be stopped by his daughter. All are scared by the experience and may have had to require counselling or medical care. It is too early to tell how permanent these scars are.

In West Palm Beach

In 1985 the Inspection Service placed a paid confidential informant who was a convicted felon on the workroom floor to determine if postal employees were trafficking in narcotics. The informant continued to use drugs himself during the operation. As with Cleveland, drug transactions were conducted out of the view of the Inspectors.

A Postal Inspector, Robert McDarby, learned that the informant was entrapping postal employees to purchase drugs for him. Inspector McDarby notified Inspection Service internal affairs of this problem. Inspector McDarby was reprimanded by supervisors in regional headquarters and told that the prosecutors found no fault with the cases. The supervisors took no further action on Mr. McDarby's statement.

19 postal employees were arrested in this ICN enforcement operation. Eventually, all charges were dismissed after the conduct of the informant and the procedures of the operation were known.

The Postal Service terminated all employees and, even though all charges were dismissed, fought any attempts to rehire the employees. All but three of the employees were rehired after prevailing in grievance arbitration against the Postal Service. The three employees who were not rehired were veterans who appealed to the Merit Systems Protection Board. Before charges were dismissed in the criminal cases, these veterans lost their appeals. The Board believed the paid informant. The Postal Service has refused to reinstate these veterans.

The Inspector in Charge of the West Palm Beach operation was placed in charge of the operation only three months after he became an Inspector. He had only two days of training in the handling of paid confidential informants and the operation of undercover narcotic enforcement operations.

At the West Palm Beach field hearing then former Inspector McDarby testified that the Inspection Service had created an incentive to increase the number of arrests by Inspectors. The plan was known as "collars for dollars". Inspectors were creative in finding ways to increase the number of arrests similar to a sales force looking for new markets. The undercover narcotic enforcement operations evolved from this effort.

In Los Angeles

In 1986 the Inspection Service placed a paid confidential informant, an unemployed construction worker who claimed his nephew became involved with drugs because of a postal letter carrier, at the Main Post Office.

12 postal employees were arrested as a result of the work of this informant. The alleged drug transactions occurred out of the view of Postal Inspectors. In fact, in some instances, the informant was told to bring the drugs he purchased to the Inspector the next day.

The employees were never rehired by the Postal Service even after the employees were acquitted or the charges were dropped.

In the case of one employee the jury foreman at his trial read a statement condemning the poor investigation by the Inspection Service. The judge agreed and urged everyone to write to the Postmaster General about the poor investigation. The Postal Service refused to take any corrective action. That employee was not rehired.

In Minneapolis

In 1991, Postal Inspectors in Minneapolis hired a confidential informant as part of a narcotic enforcement operation and placed on the Postal Service rolls. As a result of his work 13 postal employees were arrested for narcotics trafficking. Ten pled guilty, one lost his case on appeal and two were acquitted.



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The paid informant used drugs himself during the operation. In fact, he tested positive for cocaine use. Inspectors arranged for another drug test but delayed it for 30 days so that no traces of cocaine would remain in his system and he would not test positive for cocaine use.

The paid informant befriended postal employees and eventually asked them to purchase drugs for him as a favor.

Postal employee Mary de la Forest, who was not arrested in the sting, testified for the defense at the trial of postal worker Jeffrey Larson. Ms. de la Forest testified on the actions of the paid informant. Mr. Larson was acquitted based on his entrapment defense which Ms. de la Forest's testimony supported. Ms. de la Forest subsequently met with a Postal Inspector and an Assistant U.S. Attorney who intimidated her so that she did not testify at any more trials about the informant's actions.

In other cities

In Boston a Postal Inspector and an informant moved into an apartment next door to a couple who were postal employees whom the Inspection Service was investigating. The Inspector purported to the male employee to be a recovering drug addict. That employee asked the undercover Inspector to be his "sponsor" in a drug rehabilitation program. In the meantime, the informant befriended the couple and continually asked them to purchase cocaine for her. The husband plead guilty, but the charges against his spouse were dismissed. Both employees, however, lost their postal jobs.

In Indianapolis in 1985 the Postal Service began a narcotic enforcement operation using confidential informants. 25 cases were brought to the U.S. Attorney for prosecution. The U.S. Attorney rejected all the cases because of actions taken by the informants. The Inspection Service then transferred one of the informants to Louisville, Kentucky. While working there, Inspectors found that he had sold drugs to a postal employee but allowed him to continue as a paid confidential informant. Eventually, the informant was arrested on federal drug charges, and the Committee learned that Inspectors in Chicago were interested in using this informant if his sentence was probation. The Committee does not know whether or not this informant continued his employment with the Inspection Service.

CONCLUSIONS

The Committee's investigation traced Inspection Service narcotic enforcement operations from 1985 to 1992. Around 1984 or 1985 the Inspection Service shifted its narcotic enforcement operations from using undercover Inspectors to paid informants.

Inspectors are not adequately trained to manage undercover narcotic enforcement operations and confidential informants.

The same problems from one enforcement operation appeared in subsequent operations. The Inspection Service failed to establish any critical nationwide review of drug enforcement operations even when faced with numerous warning signs. Inspectors continued to press for arrest statistics. There was no internal Inspection Service review program to correct the errors of past undercover operations. The problems of the past were repeated and the warning signals continued to be ignored.

Even when employees were acquitted or charges dropped, postal management refused to rehire these employees and only relented after arbitration rulings or this Committee's investigation.

Postal Inspectors continue to use paid informants who are convicted felons in postal facilities to find drug traffickers. The Committee is not aware of any program by any other federal law enforcement entity that infiltrates the agency's workplace using felons as paid informants as the Inspection Service has been doing for over ten years.

Re-employment and back pay are inadequate to compensate innocent victims of a renegade Inspection Service who disregard the lives of postal employees for arrest statistics.

Mr. CLAY. May I say to the witnesses that, as the testimony of this hearing bears out, it is apparent that the narcotic enforcement operations of the Inspection Service are quite troubling. There were no internal controls to prevent repetition of errors which caused suffering and harm to innocent postal workers.

Today, I will introduce legislation to establish an independent inspector general for the Postal Service who will oversee the pro-

grams of the Inspection Service. This legislation will also prevent the Postal Service from hiring paid confidential informants in most narcotic operations. The Inspection Service efforts should be focused elsewhere.

I will also be introducing legislation to establish a mechanism for these innocent victims to seek compensation from the Postal Service for all the harm they and their families have suffered.

Are there any further questions to be asked? If not, that concludes the hearing.

Mr. Hunter.

Mr. HUNTER. I would like to close with a few remarks.

First and foremost, I apologize for what has happened. I accept responsibility to continue to work to correct these wrongs. It is extremely regrettable that the handling of these narcotics cases has reflected poorly upon a organization that is doing so many things right, but that does not excuse the issue at hand.

In response to the issues that have been raised here, I will continue to work aggressively with regard to the race issues that were raised. We will not pay and do not pay for collars for dollars. We will meet with the FBI, the ATF, and Park Police regarding the concerns that were raised of collars for dollars, payment for information and bonus systems.

We will work aggressively to resolve the issues that were raised with regard to West Palm Beach and Los Angeles even ahead of the deadline and we will adhere to the moratorium now with regard to the introduction of any new external confidential informants in narcotics investigations.

I share the concern and I pledge to continue to work diligently to resolve these issues and to reach a resolution that is fair and acceptable to everyone.

Thank you very much.

Mr. CLAY. I thank each of you for your contribution to the hearing today.

That concludes the hearing.

[Whereupon, at 12:25 p.m., the committee was adjourned.]



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